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I. INTRODUCTION

In the past decade, some exciting changes have been made in

Swedish occupational safety and health law. The primary focus of this Article is to explore these changes and discuss important differences between Swedish and United States practices. The legal problems are basically the same in the United States and Sweden, because both nations are highly industrialized and workers in each country are engaged in similar processes and are exposed to many of the same substances. Cultural differences and traditions, however, have affected the choices each country has made to protect its workers from occupational hazards.

There is a significant exchange of ideas on occupational safety and health matters between the United States and Sweden at the technical level. Lawyers in the United States, however, are not very well informed about the recent legal innovations that have been introduced in Sweden. This situation is unfortunate because lawyers in this country play a major role in shaping policy. On the other hand, the Swedish system is not perfect, and Swedes can benefit from a closer scrutiny of administrative implementation and judicial interpretation of occupational safety and health law in the United States.

Section II of this Article describes how the Swedish system of occupational safety and health administration functions. This section focuses on the new legislation, the administrative and adjudicatory procedures, and the historical background. Section III of the Article provides a more detailed examination of some of the unique features of the Swedish program that have been implemented to improve the working environment. Section IV addresses several problem areas in the administration of Swedish occupational safety and health law. Comparisons between the laws of the United States and Sweden will be advanced throughout the Article.

In order to understand the differences between the two systems of occupational safety and health administration, it is necessary to understand the cultural contexts from which the laws have arisen. Moreover, the extent to which each country may borrow ideas from the other will depend in part upon the influence which these cultural factors have had on the establishment of particular measures. Throughout this Article, therefore, references are made to the cultural differences—political, historical, and psychological—which may account for different approaches in Sweden and the United States.

II. BACKGROUND

A. History

1. Sweden

The Swedish commitment to occupational health and safety began earlier and has been more continuous than efforts in the United States.

Industrialization in Sweden did not begin until the 1850's, nearly 100 years later than in the United States.[1] Industrial expansion first started in the saw mills, and from the 1860's to the 1880's, the population of the cities increased dramatically as workers moved in from farming communities in search of factory jobs.[2]

One particular occupational illness drew the attention of the Swedish *Riksdag* at an early date: phosphonecrosis. This disease, which caused people's jaws to rot away, resulted from exposure to the phosphorus used in the process of making matches. In 1862, a motion was introduced in the *Riksdag* to reduce health risks in matchstick factories. Legislation passed in 1870 contained provisions for ventilation, a minimum age requirement for workers, and a prohibition against working longer than six months in the most dangerous parts of the matchmaking process.[3]

In 1889, the *Riksdag* passed a more general, comprehensive occupational health and safety law: The Law on Dangerous Occupations.[4] Three labor inspectors were hired to ensure that employers complied with the new Law. During the early 1900's, the number of labor inspectors gradually increased, and the Law was periodically amended.

In 1938, a committee was appointed to revise the law on dangerous occupations. It was not until after 1949, however, that the committee's work was completed. A new law was passed, a royal proclamation was issued, and a new agency, the Worker Protection Administration, was created as a result of the committee's recommendations. The new agency was responsible for overseeing the operations of the labor inspectorate as well as implementing the legislation concerning working hours.[5] For many years, the Worker Protection Administration had

1. B. DELIN, FRÅN HUSAGA TILL FÖRETAGSHÄLSOVÅRD 3 (1981).

2. *Id.*

3. *Id.*

4. *Id.* at 9. The Social Democratic Party, which has had an enormous influence on the course of twentieth century Swedish history, was also formed in 1889.

5. *Id.* at 47.

little power[6] and it received only modest appropriations. This situation began to change, however, in the late 1960's.

Increased awareness of the effects of air pollution from factories led to concern for the health of workers exposed to dangerous chemicals inside the plants. In 1969, the Swedish Confederation of Trade Unions (LO) released the results of a member survey on occupational safety and health. A surprising eighty-two percent of the 4,000 workers surveyed felt that they were exposed to health risks at work, with forty-one percent characterizing such exposure as "a high amount."[7]

A wildcat strike in 1969 at the LKAB[8] mine in Kiruna, the world's largest underground mine, also sparked the debate. The Swedish labor scene during the previous twenty-five years had been exceedingly peaceful by United States standards, and the strike took Sweden by surprise.[9] Although the mine workers were upset about their pay, their protests focused on a new issue—they contended that the ever increasing pace of the piecework wage system[10] caused stress and increased accidents. The workers also complained about the deteriorating underground environment, which they claimed had worsened since the introduction of diesel-powered equipment.[11]

People in Sweden began to discuss "the working environment" which included not only the purely physical aspects of job safety and health, but also the psychological aspects. In 1970, a commission was appointed to review the law, and to suggest appropriate adjustments.[12] Many changes were made as a result of the commission's first report issued in 1972.[13] Revisions occurred primarily in the Worker Protection Act,[14] the building codes,[15] and the instructions to the agencies.[16]

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6. S. KELMAN, REGULATING AMERICA, REGULATING SWEDEN: A COMPARATIVE STUDY OF OCCUPATIONAL SAFETY AND HEALTH POLICY 3 (1981).

7. B. DELIN, *supra* note 1, at 61.

8. LKAB stands for *Luossavaara Kirunavaara AB*. It is primarily an underground iron mine, though there are some deposits of copper and silver.

9. Ekström & Winiarski, *How the Unthinkable Happened*, 1980 WORKING ENV'T 18.

10. By piecework wage system, the author is referring to compensation based on the amount each worker has produced, rather than a flat hourly rate.

11. Ekström & Winiarski, *supra* note 9.

12. Delin, *Arbetsmiljö under 10 år*, 15 ARBETSMILJÖ 11 (1979).

13. Bättre Arbetsmiljö-Delbetänkande av arbetsmijöutredningen, Statens Offentliga Utredningar [SOU] 1972:86 (1972). Literally translated *Statens Offentliga Utredninger* means the State's Official Investigations. These are the reports of the commissions which study special areas of concern. Quite often they contain proposals for new legislation. *See infra* notes 128-30 and accompanying text for a discussion of the historical background of these commissions.

14. Arbetarskyddslagen, Svensk Författnings Samling [SFS] 1941:1, SFS 1973:25, §§ 40-44 (1973).

Rules were developed to increase worker participation in decision-making in occupational safety and health matters. In addition, the sanctioning system was changed, and the administrative structure of the Worker Protection Administration was reorganized. The role of labor unions was emphasized, and the positions of the safety stewards and safety committees were strengthened. These changes were adopted by the *Riksdag* in 1973.

The Work Environment Fund for research, development, and education concerning work environment issues was established by the *Riksdag* in 1972.[17] Also, the Worker Protection Board merged with the National Institute of Occupational Health. The new agency was named the National Board of Occupational Safety and Health (the National Board). In 1974, a national labor contract was signed between the Swedish Employers Confederation (SAF), LO, and the Swedish Confederation of White Collar Workers (PTK).[18] This labor contract provided for the funding of work environment education. This reform was followed in 1976[19] by a national contract establishing company health services.

The commission submitted its final report in 1976, recommending a complete overhaul of the Worker Protection Act. The commission's report, along with a draft text of a new law, was submitted to interested organizations and agencies for comment.[20] The final government proposal was drawn up by the Labor Department and approved by the Law Council without change.[21] The new Working Environment Act

15. Byggnadsstadgan, SFS 1973:25 §§ 54-56, 64, 66, 72 (1973).

16. Förordning med instruktion för arbetarskyddsstyrelsen, SFS 1972:164, amended by SFS 1973:564 (1972), SFS 1973:846 (1973) Förordning med instruktion för yrkesinspektionen, SFS 1973:847 (1973) Instruktion för styrelsen för arbetarskyddsfonden, SFS 1973:856 (1973).

17. B. DELIN, *supra* note 1, at 63.

18. SAF/LO/PTK Working Environment Agreement (1974) [hereinafter cited as SAF/LO/PTK Agreement].

19. B. DELIN, *supra* note 1, at 63.

20. This procedure, called remiss, is a normal stage in the Swedish legislative process. *See* N. ELDER, GOVERNMENT IN SWEDEN 135-37 (1970).

21. H. GULLBERG, K.I. RUNDQVIST, H. STARLAND, ARBETSMILJÖLAGEN: KOMMENTAR OCH NYA FORFATTNINGAR (1981) [hereinafter cited as H. GULLBERG]. This constitutionally required review by the Law Council is comparable to the testing of a law's constitutionality by the United States Supreme Court, yet it does not amount to judicial review in the American sense of the term. The Law Council consists of three members of the Swedish Supreme Court and one member of the Supreme Administrative Court. One difference between the constitutional review conducted in Sweden and that conducted in the United States is that in Sweden it takes place before, not after the passage of legislation. Thus, the Law Council never considers the facts of a particular case to determine if the law as applied is unconstitutional or whether it violates general legal principles. Furthermore, in

was passed by the *Riksdag* and became effective on January 1, 1978.[22]

2. United States

The development of comprehensive, national legislation to protect workers from occupational hazards occurred much later in the United States than in Sweden. State efforts in this area began relatively early. The first industrial safety laws were passed in the 1860's and by 1920, almost all of the states had passed some type of worker safety legislation.[23] These early laws, however, were typically more cosmetic than substantive.[24]

Congress enacted specialized legislation addressing hazards in particularly dangerous occupations (especially in the area of mine safety), but general regulation was left primarily to the states.[25] Only a few states, however, responded by developing adequate programs of their own. Twenty states had established occupational safety and health agencies by the late 1960's, but only a few of these entities were permitted to inspect workplaces and enforce regulations.[26] It was this general pattern of neglect by the states that led to the passage of the Occupational Safety and Health Act of 1970.[27] For the first time, United States employers were faced with civil and criminal penalties for the violation of national safety and health standards. The Occupational Safety and Health Administration (OSHA) was established to promulgate and enforce regulations nationwide.[28]

B. The Swedish Working Environment Act

1. Organization

The Swedish Working Environment Act of 1978 is a "frame law"

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a strict legal sense, the *Riksdag* is not obligated to follow the opinion of the Law Council, though it usually does. J. BOARD, THE GOVERNMENT AND POLITICS OF SWEDEN 179 (1970).

22. Arbetsmiljölagen [AML], SFS 1977:1160 amended by SFS 1980:245, SFS 1980:428, SFS 1982:674 (1977). An English translation of the full text of the Act is set out in Appendix I, *infra* pp. 336-52.

23. M. ROTHSTEIN, OCCUPATIONAL SAFETY AND HEALTH LAW § 1, at 2 (1978).

24. *Id.*

25. *Id.* at 2-4.

26. N. ASHFORD, CRISIS IN THE WORKPLACE: OCCUPATIONAL DISEASE AND INJURY (1976).

27. Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-78 (Supp. II 1978). Both the Act and the Occupational Safety and Health Administration are commonly referred to as OSHA. To avoid confusion, the Act shall be referred to as OSHA Act and the Occupational Safety and Health Administration will hereinafter be referred to as OSHA.

28. OSHA was established pursuant to a delegation of authority from the Secretary of Labor in May, 1971. Secretary's Order No. 12-71, 36 Fed. Reg. 8754 (1971).

which sets forth in very general language the basic principles for the regulation of occupational safety and health. More exact specifications and standards are found in the regulations issued by the supervising agency, the National Board of Occupational Safety and Health.[29] Inspections are conducted by the nineteen regional Labor Inspectorate offices.

There are nine chapters in the new law.[30] The first chapter outlines the coverage of the Act. Chapter 2 sets forth the general goals of the new law and contains most of the language concerning the new "total work environment" perspective on occupational safety and health. In chapter 3, the duties of employers and employees are enumerated. Chapter 4 concerns working hours.[31] In the Swedish view, on-the-job safety and job satisfaction have a close relationship to the number of hours worked daily and the number of breaks.[32]

The fifth chapter regulates the work of minors, who are defined as persons under eighteen years of age. Section 2 of chapter 5 contains a general prohibition against work done by persons under the age of sixteen, with the exception of "light work." This section is one of the few mandatory sections of the Act. When mandatory sections are violated, fines are automatically imposed once the violation has been estab-

29. The government's power to issue regulations stems from several sections of the Act: ch. 3, §§ 11-17, ch. 4, § 9, and ch. 5, §§ 2-4.

30. *See* Appendix I, *infra* pp. 336-52.

31. A new law governing working hours came into effect on January 1, 1983. Arbetstidslagen, SFS 1982:673 (1982). Although there are some changes, the new law basically combines the provisions of the Working Environment Act concerning working hours, AML ch. 4, §§ 1-9 and ch. 7, §§ 7 and 10, with the provisions of an older working hours law, Arbetstidslagen, SFS 1975:728, *amended by* SFS 1976:597, SFS 1977:1163, SFS 1980:206 (1970).

32. The labor minister, in his commentary accompanying the Working Environment Bill to the *Riksdag*, made the following remarks:

> With the broader view of the working environment which I am recommending, working hours will be an important issue. Mechanization and rationalization processes have increased demands for productivity on the part of the worker. . . . More specialized and mechanized job duties lead to increased ties to the work process, decreased possibilities for contact with other workers and monotony during the work day. As a consequence of this trend, questions such as the psychological work load have come into the limelight.

Regeringens Proposition 1976/77: 149, AML [1977] 301 [hereinafter cited as Proposition]. The Government Proposition is a document sent to the Swedish Parliament after completion of the remiss process. It includes the commission report, a summary of the remiss replies, and a government proposal for a new bill. Usually the government proposal is accompanied by a statement of a minister of the government reporting remiss replies and the commission report explaining why changes, if any, are being made in the commission's proposal. The Proposition is the most important document in terms of the legislative history of a Swedish law. Interviews with Helena Striwing, Attorney, Falun Labor Inspectorate District Office, Falun, Sweden (June 10, 1981).

lished.[33] Chapter 6 sets forth procedures for employer and employee cooperation in the daily administration of occupational safety and health efforts, including the powers and responsibilities of safety stewards and the role of the safety committees. Chapter 7 outlines enforcement and compliance procedures. Chapter 8 lists the different sanctions for violations, and chapter 9 sets forth the appeal procedure.

2. Main Features of the Law

Employer coverage under the new Work Environment Act is quite broad and there is no minimum number of employees necessary for the Act to apply.[34] "Every activity in which an employee performs work for an employer's benefit" is covered by the Act. The only two exceptions are work performed on ships (which is covered by other legislation) and work performed in the employer's home.[35] Several categories of persons not normally considered to be employees, including students, draftees, prisoners, and patients, also receive protection under the Act, but with some limitations.[36]

There are several areas of emphasis not previously included in the Worker Protection Act. One such area concerns the psycho-sociological elements of the work environment. Specifically, chapter 2 provides: "Working conditions must be adapted to individual physical and mental capabilities."[37] The special risks encountered by solitary employment are addressed in chapter 3, section 2.[38]

Another area of emphasis is the planning of the work environment.[39] The law requires employers to consider the effects of the work environment on employees before introducing new machines or instituting new methods of organizing work. Also, employees are accorded a great deal of input with respect to the planning of new construction. Both the work environment ordinance and the Building Code Law require that the workers' representatives be consulted before the approval of building permits.

Worker satisfaction is also considered to be an element of the total work environment under the new Act. In order to achieve this, chapter 2, section 2, provides that "work should be arranged so that the worker

33. AML, ch. 8, § 2.
34. *Id.* ch. 1, § 1.
35. *Id.* ch. 1, § 3.
36. *Id.* ch. 1, § 2.
37. *Id.* ch. 2, § 1.
38. *Id.* ch. 3, § 2.
39. *Id.* ch. 2, §§ 2, 4.

can influence his or her work situation."[40]

Undoubtedly, the most significant changes in the law involve the increased importance and authority of safety stewards and committees. Safety stewards under the new law are: 1) to be appointed at all work places where at least five employees are regularly employed;[41] 2) entitled to leave without pay for performance of their duties;[42] 3) authorized to order a work stoppage if there is an immediate and serious risk to an employee's life or health;[43] and 4) entitled to be informed about and receive all relevant documents concerning the work environment.[44]

Safety committees are to be organized at all workplaces where at least fifty persons are regularly employed.[45] Their function is to plan and supervise company safety and health activities.[46] By contract, worker representatives on safety committees outnumber employer representatives by one vote.[47]

C. Cooperation Between Labor Market Parties

1. Sweden

Cooperation between unions and employers has been the key to the success of the Swedish occupational safety and health program. The "historic compromise" which resulted in the Saltsjöbaden Agreement of 1938 marked the beginning of cooperative efforts between union and management.[48] Since that time, conflicts in the Swedish la-

40. *Id.* ch. 2, § 2.
41. *Id.* ch. 6, § 2.
42. *Id.* ch. 6, § 5.
43. *Id.* ch. 6, § 7.
44. *Id.* ch. 6, §§ 4, 6.
45. *Id.* ch. 6, § 9.
46. *See* SAF/LO/PTK Agreement, *supra* note 18, § 17.
47. *Id.* Note, however, that decisions regarding measures which entail financial commitments or consequences for the company are binding for the company only if unanimity is reached in the committee. *Id.* § 22.
48. The Saltsjöbaden Agreement, named for the hotel in the Stockholm archipelago where LO and SAF representatives met, set forth procedures for resolving labor conflicts which are still followed today. During the previous three decades, the Swedish labor market was frequently disrupted by devastating strikes and lockouts. According to Walter Korpi, the explanation for the change in strategy lies in the changed political situation. With the Social Democrats firmly in control of the government, the unions could pursue their goal of redistributing income in the political arena, rather than in the labor market. Employers, adapting to the changed circumstances, dropped their militant stance. The resulting compromise was built on an agreement to expand production: the rationale being that by increasing the size of the pie, there would be more to distribute. Another feature of the agreement was centralized negotiations. Procedures were set forth for union and management negotiations on basic principles at the national level, with provisions for deviations at

bor market have been rare.[49] Along with this long period of labor peace, Sweden has been blessed with a relatively stable and prosperous economy. Both factors have contributed to a continuous increase in living standards for employees[50] and the steady achievement of labor union goals.

Perhaps the most important factor which has fostered cooperation between the labor market parties has been the long period during which the Social Democrats have held the reins of government power. Sweden has a parliamentary system of government, and the Social Democrats have, on their own or in a coalition, won every election since 1932, except for two in the late 1970's. The Social Democratic Party is by far the largest political party in Sweden, commanding support from approximately one-half of the voters.[51] In addition, the party is intimately connected with the unions in Sweden. The small number of strikes is partly attributable to the fact that workers have often been able to achieve their goals through the political process. The lack of strenuous opposition on the part of Swedish employers has also enhanced cooperation between the labor market parties on occupational safety and health issues. This factor represents a major difference between the United States and Sweden. The reasons for differing employer attitudes in the two countries will be discussed *infra*.[52]

Small group negotiations are the forum for cooperation between the Swedish labor market parties, both at the local and the national level. Leaders from the large umbrella unions (LO and PTK, and their counterparts in the public sector) meet with management leaders and

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the local level based on local conditions. W. KORPI, SVERIGE-ARBETSFREDENS LAND (1981).

Another theory as to why LO and SAF were able to come to agreement was the desire to avoid violent labor strikes. The immediate catalyst was the Ådalen massacre of 1931 in which five workers were killed by police during a labor dispute. The Saltsjöbaden Agreement was partly spawned by the realization of the labor market parties that if they did not take swift and firm action to avoid similar tragedies, the government would intervene in contract negotiations. Interview with Barbro Hellermark, Professor, Institute for English Speaking Students at the University of Stockholm, Stockholm, Sweden (February 22, 1983).

49. *Id. But see supra* notes 8-11 and accompanying text (discussion of 1969 LKAB strike).

50. Ekström & Winiarski, *supra* note 9, at 18.

51. In September 1982 the Social Democratic Party garnered 45.6% of the votes in the national elections. The Communist Party won 5.6% of the votes. The two parties vote as a block on most issues. Unlike the United States, discipline in all of the Swedish political parties is quite strict. It is extremely unusual for a party member to vote against the party's position on an important issue. Thus, the Social Democrats, with the support of the Communists, have a comfortable majority. Interview with Birger Viklund, Public Information Office, Arbetslivscentrum, Stockholm, Sweden (February 24, 1983).

52. *See infra* notes 118 to 142 and accompanying text.

discuss the working environment over the bargaining table. Several contracts of major importance have resulted and others have been updated and refined in recent years.[53] At the local level, union and management representatives meet regularly with the safety committees to plan health and safety strategy.

Safety stewards meet with management as problems arise. During the 1930's, safety stewards were first instituted in Sweden. A 1942 agreement between LO and SAF encouraged the appointment of plant-level safety stewards and safety committees.[54] It was not until the reforms of the early 1970's, however, that safety stewards were given any significant power. The comprehensive education of safety stewards has greatly increased their credibility, and their new legal rights, such as the power to stop work, have provided them with the leverage to back up their demands.

2. United States

In the United States, cooperation between the labor unions to improve worker health and safety is a relatively recent phenomenon. In the past, worker concern with economic issues has often preempted safety and health considerations.[55] It was not until 1973 that federal mediation officials noted that health and safety problems were a major issue in contract stalemates in major industrial bargaining.[56]

Only a few unions, notably the United Auto Workers (UAW) and the Oil, Chemical and Atomic Workers (OCAW), have obtained specific health and safety programs through their contract negotiations.[57] The phenomenon of the safety steward is rare in the United States. Some unions in the United States employ safety experts who can be dispatched to the different workplaces,[58] but there is usually not an employee on the shop floor who is responsible for health and safety matters. These advances should, however, be considered in light of the fact that only twenty-six percent of United States workers are unionized. In Sweden, seventy-four percent of workers are union members, and

53. *See supra* notes 18 & 19 and accompanying text.

54. Överenskommelse mellan Svenska Arbetsgivare Föreningen och Landsorganisation en angående allmänna regler för den lokala säkerhetstens organisation, § 1 (1942).

55. N. ASHFORD, *supra* note 26, at 493.

56. *Id.*

57. *Id.* at 494.

58. Interview with Birger Wiklund, Public Information Officer, *Arbetslivscentrum*, in Stockholm, Sweden (July 20-21, 1981).

nearly all workers are protected by union contracts.[59]

OSHA has recently requested public comments on a new program to encourage employee participation in the regulation of workplace health and safety.[60] Entitled "Voluntary Programs to Supplement Enforcement and to Provide Safe and Healthful Working Conditions," the proposed program would sponsor pilot projects in three areas.[61] The three employee programs have been given the names: STAR, Build, and Try. The Sharing the Accountability for Regulation (STAR) Program is aimed at general industry firms with experienced labor management committees, complete safety and health programs, good safety records, and good OSHA inspection histories. Project Build is aimed at the construction industry and would function similarly to STAR, except that it would focus on individual worksites. Operation Try is envisioned as an experimental program to explore alternatives to employee-management committees for utilizing employee participation to create and maintain safe workplaces.[62]

The programs are still in the planning stages, and details of how they will actually function are sketchy. Comments by labor organizations, however, have been critical[63] because of skepticism about the sincerity of management and the Reagan administration. Although labor representatives favor strengthened joint committees and want more of them, they do not want to see committees as a substitute for the role OSHA now plays. Instead, labor representatives recommend stronger OSHA enforcement and special training for union members on the joint committees.[64]

D. Regulations

1. Sweden

Procedures for rulemaking vary greatly between the United States and Sweden. In Sweden, there are very few formal requirements. For

59. STATISTISKA CENTRALBYRÅN, MILJÖSTATISTISK ÅRSBOK-ARBETSMILJÖ 270 (1978) [hereinafter cited as STATISTICAL YEARBOOK].

60. Voluntary Programs to Supplement Enforcement and to Provide Safe and Healthful Working Conditions: Request for Comment and Information, 47 Fed. Reg. 2796 (1982).

61. In addition to the employee participation programs, pilot programs will be sponsored in two other areas: management initiative programs and private sector support for small businesses.

62. *See supra* note 61. 47 Fed. Reg. 2796 (1982).

63. Ruttenberg, Friedman, Killgallon, Gutchess and Associates, Inc., The Views of Trade Union Representatives Concerning Labor-Management Safety and Health Committees (1980) (Report Submitted to OSHA).

64. O.S.H. REP. (BNA) (July 8, 1982).

example, there are no requirements for notice, comment, or hearing.[65] Typically, the National Board follows a four-step process before adopting a regulation. First, the Board forms a committee to work out a draft text of a regulation. A small number of business and union representatives are normally invited to work with agency officials. Meetings of the committee are neither secret nor public.[66] Meeting dates and locations go unannounced to the general public, no outside witnesses are called upon to testify, and transcripts of the meetings are not made.

Second, the draft text is sent out to interested organizations and agencies for comment. This procedure is called remiss, and is done at the agency's discretion.[67] The agency selects individuals to comment on the draft text. No public announcement is made, however, concerning this draft. Next, the agency assimilates these comments and the draft text into the final form of the regulation. Finally, an agency lawyer reviews the regulation before it is issued to ensure that it is legally sound.[68] Unlike the rulemaking procedures in the United States, there is no right under the new law to appeal the rules promulgated by the National Board.[69]

2. United States

In the United States, there are several methods which can result in the promulgation of a rule by the Occupational Safety and Health Administration. One method, relied upon considerably by OSHA initially, is for national consensus standards organizations to propose draft regulations.[70] By a second method, interested parties can petition OSHA to promulgate a rule, and OSHA can appoint advisory committees to develop health and safety standards. In addition, the National Institute of Occupational Safety and Health (NIOSH) can conduct re-

65. S. KELMAN, *supra* note 6, at 13.

66. *Id.* at 14.

67. Remiss is also a stage in the legislative process. *See supra* note 20 and accompanying text.

68. S. KELMAN, *supra* note 6, at 14.

69. AML, ch. 9, § 2.

70. Section 6(a) of the OSHA authorized the Secretary of Labor to promulgate rules based on national consensus standards during the two year period after OSHA became effective. Section 3(9) of the Act defines national consensus standards as any occupational safety and health standard or modification thereof which (1) has been adopted and promulgated by a nationally recognized standards producing organization under procedures whereby it can be determined by the Secretary that persons interested and affected by the standards have reached substantial agreement on its adoption, (2) was formulated in a manner which afforded diverse views to be considered, and (3) has been designated as such a standard by the Secretary after consultation with appropriate federal agencies.

search and recommend standards. Most regulations, however, are adopted on OSHA's own initiative.[71]

The advisory committee method perhaps most closely resembles the procedure followed in Sweden. Under any of the above methods, however, OSHA must: 1) publish the proposed regulation in the Federal Register; 2) allow thirty days after publication for submission of written comments; 3) hold public hearings if anyone requests them during the comment period; and 4) publish the final regulation in the Federal Record accompanied by a statement of reasons.[72]

OSHA rulemaking proceedings are often circus-like. Public hearings can take months, and demonstrations "complete with chants and placards" have occurred.[73] Lawyers fill the hearing rooms. Many of them are more intent on building a record for a court appeal than providing OSHA with information.[74] Transcripts are filled with invective—labor denouncing industry, industry denouncing labor, and both sides denouncing OSHA.[75]

OSHA regulations are invariably challenged in court. Even though the OSHA Act provides for informal rulemaking, the standard of judicial review is that regulations must be "supported by substantial evidence in the record considered as a whole."[76] The end result of these complex administrative procedures is that it takes years before OSHA regulations formally become effective.[77]

E. Administrative Implementation

1. Sweden

Inspectors in Sweden have a dual role. On the one hand, they give practical advice and encourage unions and management to cooperate on occupational safety and health issues. Section 15 of the Working

71. *See* M. ROTHSTEIN, *supra* note 23, ch. 3, for a more detailed discussion of how OSHA standards are promulgated.

72. OSHA rulemaking procedures appear at 29 C.F.R. § 1911 (1977).

73. S. KELMAN, *supra* note 6, at 12.

74. *Id.* at 26.

75. *Id.* at 20.

76. OSHA Act, 29 U.S.C. § 655(f) (1976). OSHA is a statutory hybrid with respect to administrative procedure. Rulemaking procedures for OSHA dictated by Congress in the OSHA Act do not conform with the normal procedures for informal and formal rulemaking by agencies set forth in the Administrative Procedure Act, 5 U.S.C. §§ 553, 554 (1976). Instead, Congress chose a hybrid version of procedural requirements for OSHA. Normally, the substantial evidence test is used in adjudicatory, or formal rulemaking procedures, and not in informal rulemaking.

77. S. KELMAN, *supra* note 6, at 18.

Environment Ordinance provides that "compliance agencies, through information, advice, instructions, and inspections are to work to achieve a satisfactory working environment. The agencies are also to encourage local health and safety activities."[78] On the other hand, inspectors have the power to issue fines for failure to obey regulations.[79]

Only a few sections of the Swedish Act provide for mandatory sanctions.[80] Normally, fines are only issued after unreasonable and persistent delay by the employer or refusal to implement a change that has been ordered by the Labor Inspectorate.[81]

Only a small number of inspections—less than one percent—result in the imposition of a written order to correct a violation.[82] In most cases, Swedish inspectors simply give oral instructions for improvements during the closing conference.[83] These instructions are without legal force. If a written notice is issued, it may or may not be accompanied by a fine.[84]

Supervision and control of Swedish inspectors by the Worker Protection Board is minimal. A few statistics on inspector performance are collected on a monthly basis by the Board, but such figures are only compiled at the end of the year for the annual report.[85]

The basics of a worksite inspection in Sweden are as follows: 1) an opening conference is held with the employer; 2) a walk-around inspection is conducted with employee representatives; and 3) a closing conference is held to discuss violations with the employer.[86]

2. United States

Although the procedures to be followed for worksite inspections are similar in the United States and Sweden, the enforcement schemes in the two countries vary greatly. In the United States, enforcement of

78. Arbetsmiljöförordningen, SFS 1977: 1166 § 15 (1977). The Working Environment Ordinance [hereinafter cited as Ordinance] was issued in conjunction with the Working Environment Act. It includes more specific instructions of procedures to be followed regarding the storage of documents, notification of injury, etc.

79. AML, ch. 8, §§ 1, 2.

80. *Id.* ch. 8, § 2.

81. S. KELMAN, *supra* note 6, at 176, 182.

82. L. Lundberg, Några Resultat Från Projektet Implementeringen Av Arbetsmiljöregler (April 4, 1981). Preliminary results from Lars Lundberg's graduate thesis were compiled for use at a seminar conducted by Arbetslivscentrum in Stockholm, Sweden [hereinafter cited as Lundberg, Preliminary Results].

83. S. KELMAN, *supra* note 6, at 183.

84. AML, ch. 7, § 7.

85. S. KELMAN, *supra* note 6, at 189, 190.

86. *Id.* at 181, 182.

the OSHA Act is based upon the concepts of pre-inspection compliance and first-instance sanctions. Employers are under a duty to comply with the Act before an inspection, because inspectors can only visit a small percentage of the millions of workplaces covered by the Act. This approach was deemed to be the most effective way of preventing accidents and illnesses and providing immediate protection. Because employers must comply with the Act before inspectors make their visits, no warnings are given when violations are found. Rather, OSHA regulations require that citations be issued for all violations detected.[87]

Instead of encouraging inspectors to give practical advice, OSHA forbids it—inspectors may not hold consultations on an employer's premises.[88] On-site consultation with employers may, however, be conducted at the state level. States which have plans approved by OSHA may provide this service directly. States without approved state plans are permitted to contract with OSHA to hire independent consultants to perform this function. Funding for these programs has in the past been provided largely by the federal government.[89]

In the United States, a tighter rein is kept on inspectors. The Occupational Safety and Health Administration maintains a computerized management information system to evaluate employee performance. Inspectors must fill out reports for each inspection and keep weekly logs accounting for their time. Area directors are thus able to compare the productivity of inspectors within their offices and between their offices and those of other regions in order to evaluate the number of serious violations assessed and the average penalty per citation.[90]

F. Adjudication

1. Sweden

One very important difference between the way occupational safety and health law is implemented in the United States and the way it is implemented in Sweden is the fact that in Sweden "there is no tradition of judicial review in the constitutional law of the country."[91] Swedish laws cannot be challenged in court as unconstitutional,[92] and the constitutionality of regulations issued by the National Board may

87. M. ROTHSTEIN, *supra* note 23, at 68-69.
88. *Id.* at 69.
89. *Id.* at 212.
90. S. KELMAN, *supra* note 6, at 188, 189.
91. J. BOARD, *supra* note 21, at 174.
92. *Id.*

not be reviewed by a court of law.[93] In the United States, there are an enormous number of constitutional challenges to the OSHA Act and to OSHA regulations. Although it is an important means by which citizens can influence policy, it is also a drain on administrative and judicial resources. In Sweden, on the other hand, though the courts are not clogged with suits challenging the constitutionality of the Working Environment Act or the regulations of the National Board, "the scope to influence policy by means of judicial review is very small or even nonexistent."[94]

Although there is no constitutional review in Sweden, there are still disputes which must be decided by administrative tribunals or courts of law. There are four basic routes for occupational safety and health cases in Sweden: 1) cases are heard within the administrative structure; 2) potential criminal violations are heard by the regular court system; 3) civil suits are heard by the labor court; and 4) cases may go to arbitration. There is some overlap, however, between the different systems.

a. *Cases Heard Within the Administrative Structure*

In each of the nineteen Labor Inspectorate districts there are eight-member boards composed of labor and management representatives.[95] The district director chairs the board meetings, which are normally held monthly to decide important questions of planning and policy. Among the local board's functions is deciding whether to approve inspectors' recommendations of citations for violations of the Act.[96]

A citation issued by the Labor Inspectorate becomes final if it is not appealed to the National Board within three weeks after its receipt by the employer.[97] Only final citations from the Labor Inspectorate may be appealed to the National Board. Until the case is heard, the employer is not usually required to follow the directives issued by the

93. *See supra* note 69 and accompanying text.

94. N. ANDRÉN, MODERN SWEDISH GOVERNMENT 208 (1968).

95. Förordning med instrucktion for yrkesingspektionen, § 7 SFS 1973:847 (1973). The rationale for including union and management representatives on local boards, as well as the national board, was to give labor market parties a more direct influence over the agency that polices the Working Environment Act. Including outside representatives was viewed as an important democratic reform. Some critics contend, however, that union representatives on the boards, especially those who have been there for some time, have become defenders of the system rather than watchdogs for their members' interests.

96. *Id.* § 12.

97. H. GULLBERG, *supra* note 21, at 201. Citations are typically issued against employers. Under unusual circumstances, however, they may be issued against employees and sole proprietors.

Labor Inspectorate. The local boards are, however, empowered to issue citations which take effect immediately.[98]

If an employer or union is dissatisfied with the decision by the National Board, the case may be appealed to the Executive Office,[99] though this action is rarely taken.

b. *Violations Pursued by Local Prosecutors*

There are three types of violations that local prosecutors may pursue.[100] First, prosecutors enforce final orders issued by the local Labor Inspectorate Board or the National Board that have not been obeyed. If the employer does not appeal a decision and does not implement the action set forth in the decision by the required date, the matter will be referred to the prosecutor for further action.[101]

The second type of case involves a violation of both the Criminal Code and the Working Environment Act, such as an accident resulting in a worker's death. Chapter 3, section 7, of the Criminal Code has a crime called "Being Responsible for Causing the Death of Another."[102] Violation of this section can result in up to four years imprisonment. These cases are usually referred to the prosecutor by the Labor Inspectorate following a serious accident, but charges may also be brought upon the prosecutor's own initiative.[103]

The third type of case involves violations of mandatory sections of the Act and citations issued by the Board which are accompanied by mandatory sanctions. There are only a few mandatory sections of the Act, and they are listed in chapter 8.[104] Only a small number of regulations have been issued by the National Board accompanied by mandatory sanctions.[105]

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98. AML, ch. 9, § 5.

99. *Id.* § 2.

100. Interview with Helena Striwing, Attorney, Falun Labor Inspectorate District, Falun, Sweden (Aug. 9, 1981). The procedural route for cases brought by the prosecutor is as follows: Cases are first heard by municipal courts (*Tingsrätt*) and may be appealed to the appellate level (*HovRätt*). In rare instances, if there is an important principle which needs to be decided, the Swedish Supreme Court (*Högsta Domstolen*) will hear appeals from the appellate level. *Id.*

101. *Id.*

102. Brottsbalken, SFS 1975:667, ch. 3, *amended by* § 7 (1975).

103. Interview with Helena Striwing, Attorney, Falun Labor Inspectorate, Falun, Sweden (Aug. 9, 1981).

104. AML, ch. 8, §§ 1-2.

105. The sparseness of regulations with mandatory sanctions is beginning to be sharply criticized by unions. For example, at a recent national convention of the Svenska Metallindustriarbetare förbundet (the equivalent of the Steelworkers Union) the National Board was strongly rebuked for their limited use of this type of regulation.

c. *Civil Suits*

Only civil suits are heard by the Labor Court. In order to bring such a suit in the Labor Court some type of legal relationship, such as a labor contract, must exist between the parties.[106] Suits before the Labor Court may be based upon a violation of the Working Environment Act, a provision of a labor contract, or a section of some other law pertaining to worker health and safety, such as the Building Code or the Law on the Sale and Distribution of Dangerous Products.[107] Many of these suits are based upon chapter 6 of the Working Environment Act, which concerns cooperation between employers and employees.[108] Section 11 of chapter 6, for example, grants unions the right to sue for damages if safety standards are impeded in the discharge of their duties.[109]

d. *Arbitration*

The SAF/LO/PTK Working Environment Agreement provides that unions or employers may have disputes decided by binding arbitration.[110] If negotiations at the local and national level have been unsuccessful, the case may be heard by the SAF/LO/PTK Arbitration Board at the insistence of either party.[111] Damages may be awarded by the Board and employers may be required to abide by the Board's decision under penalty of fine.[112] Contract violations may also be heard by the Labor Court following unsuccessful local and national negotiations.[113]

2. United States

In the United States, the primary route for resolving occupational safety and health disputes is administrative, with later access to the federal courts if an aggrieved party is dissatisfied with the result at the administrative level.[114] For employees covered by collective bargaining agreements with special health and safety provisions, the specified

106. Interview with Helena Striwing, Attorney, Falun Labor Inspectorate, Falun, Sweden (Aug. 9, 1981).
107. *Id.*
108. AML, ch. 6, §§ 10-15.
109. *Id.* ch. 6, § 11.
110. SAF/LO/PTK Agreement, *supra* note 18, §§ 29-30.
111. *Id.*
112. *Id.* § 30.
113. *Id.*
114. OSHA Act, *supra* note 27, §§ 10-11.

grievance procedure, which may eventually lead to arbitration, provides another remedy.

The administrative route in the United States, as in Sweden, begins with an inspection by a compliance officer. If a citation is issued, employers, individual employees, and unions have fifteen working days to file a notice of contest.[115] If no notice of contest is filed, the citation becomes final and is not subject to agency or judicial review.[116]

Contested citations are reviewed at hearings presided over by an administrative law judge (ALJ). Following the judge's decision, a case may be heard by the Occupational Safety and Health Review Commission (OSHRC). If none of the three presidentially-appointed commissioners which make up OSHRC directs a review, the ALJ decision becomes final. If the Commission decides to review a case, the evidence is reconsidered and a new decision is issued. A final order of OSHRC or an ALJ decision which has become final may be appealed to a United States court of appeals and eventually to the Supreme Court.[117]

III. UNIQUE ASPECTS OF THE SWEDISH OCCUPATIONAL SAFETY AND HEALTH PROGRAM

Six aspects of the Swedish occupational safety and health program which are unique to that country are examined in Part III of this Article. Most of these features are the result of recent legislative innovations, such as the training program for safety stewards, the right of safety stewards to stop work, and the company health services. Part of the uniqueness also stems from attitudes or ideas that have received greater attention or are more pronounced in Swedish society than in other countries.

A. Lack of Employer Opposition

The lack of employer opposition to Swedish occupational safety and health requirements is difficult for observers from the United States to comprehend. The fact that Sweden has forged ahead in substantive areas while the United States has become bogged down in procedural battles is attributable to different employer attitudes.

A surprising indication of the difference in employer attitudes be-

115. *Id.* § 10(c).
116. *Id.* § 10(a).
117. *Id.* § 11(a) and (b).

tween the two countries surfaced during an interview conducted with one of the Labor Inspectorate's attorneys. It was revealed that most Swedish employers remedy hazards in the manner directed while they appeal the Labor Inspectorate's decision to the National Board. This process occurs, the attorney contended, even when the employer believes the government is wrong.[118] In the United States, by contrast, many employers vociferously resist imposition of OSHA standards, acquiescing to them only after lengthy legal contests.

Other indications of the employer acceptance of occupational safety and health measures by Swedish employers are 1) the lack of procedural challenges to occupational safety and health decisions, in comparison to the extent that such challenges take place in the United States,[119] and 2) the general employer acceptance of the idea that investments in occupational safety and health are consistent with the long term interests of business.[120]

Steve Kelman postulates that the differences in employer attitudes stem largely from differences in the way in which controversies are resolved in the two countries. According to Kelman,[121] the different methods of dispute resolution relate back to basic differences in the social systems.

In the United States, the liberal individualistic tradition and a distrust of government have led to a preference for the adversary trial as a model for conflict resolution. In Sweden, however, deferent values stemming from what Kelman terms the *overhet* state have led to a preference for small group negotiations for problem solving.[122] Small group negotiations tend to promote agreement. Friendship ties develop, especially if the groups meet on a continuous basis. "[T]he benefits of coming to agreement become not only avoidance of the costs of no agreement but also the esteem of the group of friends."[123] On the other hand, small group negotiations diminish the chances that all points of view will be heard. Such negotiations are therefore less democratic.

In contrast, adversary trials by their very nature encourage parties

118. Interview with Helena Striwing, Attorney, Falun Labor Inspectorate District, Falun, Sweden (Aug. 9, 1981).

119. This conclusion is based upon the author's own analysis of the appeals to the Worker Protection Board, *Beslut i Besvärsarende* 1978 *och* 1979.

120. Interview with Lars Ryding, Head Safety Steward and Åke Nilsson, Safety Engineer, Domnarvets Järnverk, Borlänge, Sweden (July 23, 1981).

121. *See generally* S. KELMAN, *supra* note 6, chs. 4 & 6.

122. *See infra* note 126 and accompanying text for the definition of *overhet*.

123. S. KELMAN, *supra* note 6, at 144.

to take a firm and perhaps more extreme stand in order to sway the judge over to their side. Trials do not encourage agreement between the parties nor are parties forced to compromise and agree because it is the judge's role to make a decision.[124] In the context of public policy-making, however, the openness of adversary trials is important. It preserves the appearance of justice and enables citizens to become more informed about decisions that affect their lives.

Kelman found these general tendencies supported in his comparison of occupational safety and health rulemaking in both countries. In the United States, where rulemaking most often occurs in the context of a hearing, the battle lines between labor and management are publicly drawn and compromise becomes difficult. One exception to this general observation occurred during the development of OSHA's construction safety regulations. Kelman concluded that "the existence of a continuous, important advisory committee of labor and business safety professionals" made it easier to achieve agreement on the construction regulations in comparison to the other regulations he studied.[125]

In Sweden, where rulemaking occurs behind closed doors, the process proceeds more smoothly. Kelman attributes this fact partly to the remnants of the *overhet* state. *Overhet*, which literally translates to "those over us," refers to the period in Sweden when distinctions existed between those who governed and those who were governed.[126] The monarchy, clergy, and aristocracy controlled the *overhet* state, and people were expected to defer to the goals defined by them.[127]

During the 1800's, when the *overhet* tradition was challenged by the peasantry and the working class, political institutions developed which encouraged accommodation among contending groups.

> The king and cabinet attempted several methods to subdue Parliament. . . . A key feature of the reaction was the decision to establish commissions consisting of members of the cabinet or high bureaucracy on the one side and of the legislature on the other, as a means of influencing the legislature to accept the royal viewpoint. The idea was that within the small-group setting of a commission, legislators would be more likely to defer to nobles in the group and that commission members would then return to the legislature and fight for the pact agreed to.[128]

124. *Id.* at 145.
125. *Id.* at 40.
126. *Id.* at 119.
127. *Id.*
128. *Id.* at 131.

Gradually the institution of commissions changed character, becoming a forum where rulers were also influenced by the legislature.[129] By the turn of the century, the commission became established as a means of formulating new laws. Its function continues today and has also been adapted to the operation of administrative agencies.[130]

Remnants of the *overhet* tradition persisted for some time. The aristocracy retained privileges and dominance in the bureaucracy and the clergy monopolized local politics and education long into the nineteenth century.[131] Kelman theorizes that "[t]he domination of the Swedish government by the Social Democratic party for forty-five years was also crucial in maintaining deferent values after the overhet state had disappeared . . . . Deference to the wishes of the state," contends Kelman, "is easier to maintain if government policies (or the identity of the rulers) are relatively constant."[132]

These deferent values and the preference for small group negotiations may explain why businesses accepted some of the compromises worked out with union representatives in Sweden. Trade association representatives took part in the small group negotiations set up by the National Board to work out the texts of safety and health regulations. In some instances, the representatives discounted the opinions of member firms because the representatives felt that their positions were more consistent with long range interests of business.[133] In contrast, United States trade association officials who participate in advisory committee meetings to work out OSHA regulations typically consider themselves to be delegates of their constituents without authority to make independent decisions.[134]

Deferent values may affect businesses in another way. It is likely that Swedish employers have agreed to improvements in the working environment because they have deferred to what they perceive as the moral judgment of society. There is a strong tradition in Sweden which places the good of the collective before individual convenience.[135] In

129. *Id.* at 132.
130. *Id.*
131. *Id.* at 120.
132. *Id.* at 122.
133. *Id.* at 154.
134. *Id.*
135. This moral tradition stems partly from political values; "[the Social Democrats] have advocated the primacy of collective responsibility in providing comprehensive welfare services in a more equitable distribution of income and taxation and sustained economic growth." M. HANCOCK, SWEDEN: THE POLITICS OF POST-INDUSTRIAL CHANGE 71-72 (1972). In addition, Swedish values that preceded socialistic theory have also been influential; "among the people runs a deep current of social concern and responsibility, a current

addition, there is considerable pressure to conform to societal goals, which is evidenced by what one author described as the "deathly fear among Swedes of losing face."[136] Thus, the acceptance of working environment reforms by Swedish businesses may reflect an unwillingness to be thought of as indifferent to the health and safety of employees.

There are, of course, other factors which can explain the lack of employer opposition to occupational safety and health measures in Sweden. One obvious explanation is the greater strength of labor unions in Sweden than in the United States. Kelman tends to downplay this argument:

> The problem is that if we accept this explanation, it simply shifts the focus of our explanation program to America. Why doesn't labor adapt to the fact of business strength and accept weak regulations? Anyone who has followed OSHA developments in the United States, knows, however, that American unions have been actively fighting for strict safety and health regulations.[137]

This factor cannot be so easily discounted, however. Swedish business has an entirely different opponent with which to contend. Unions represent the overwhelming majority of employees in Sweden. Not only are physical laborers and skilled tradespeople represented, a high percentage of clerical, professional, and management employees are also members of labor unions. Moreover, labor unions are intimately connected with the Social Democratic party, which has been the dominant political force in the country for over half a century.[138] Swedish businesses have thus had to tread more carefully than their counterparts in the United States because the labor movement has held the reins of power and continues to exercise a dominating influence over Swedish politics.

In the United States, labor unions are just one of many groups that make up the supporting structure of the Democratic party, and the Democrats have traded power back and forth with the Republicans

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springing from a strong Christian tradition and conditions of life that have demanded mutual helpfulness." F. SCOTT, SWEDEN: THE NATION'S HISTORY 586 (1970).

136. F. FLEISCHER, THE NEW SWEDEN 343 (1967). Another observer expressed this concern for what others think in the following manner: "The Swede acts as if he felt upon him all the time, the evil eye of others' criticism. 'We Swedes,' says a Swedish housewife, 'make a god of our neighbours, of authorities, institutions and academic powers.' " P. AUSTIN, ON BEING SWEDISH (1968).

137. Kelman, *Occupational Safety and Health in Sweden: The Politics of Cooperation*, 2 WORKING LIFE 4 (1977).

138. *See supra* note 51.

several times over the past decades.[139] While labor unions have been in and out of favor, depending upon the administration, business has always held a stable and prominent position in the power structure of the United States.

Another factor which helps explain the attitude of business in Sweden is the general acceptance of social welfare goals among all parties in Sweden. This factor has undoubtedly eased the acceptance of pro-protection ideas and legislation.[140]

A final factor which may account for the differences in the two countries is size. In a smaller country, the elite may be small enough so that most leaders know each other personally. In the United States this is less likely to be true.[141] In contrast, the Swedish elite are members of an extended small group and ties may more easily develop.[142]

B. Worker Education and Worker Consciousness

A major difference between the occupational safety and health programs of the United States and Sweden is the higher level of worker knowledge and consciousness about these issues in Sweden. The main reason for this difference is the comprehensive training program for safety stewards which has been conducted in Sweden since 1974.

In 1974, a landmark labor contract was signed which provided for paid, on-the-job training for all of Sweden's safety stewards.[143] In addition, the *Riksdag* passed a law which provided funding for the new undertaking: all employers are required to pay a special tax of .155% on wages and benefits per year.[144] The Work Environment Fund was established to oversee and distribute the funds collected.[145]

The basic training course is entitled "Better Working Environ-

139. Unions in the United States have also had to cope with a tarnished image (corruption, connections with organized crime) from which the labor movement in Sweden has been free. Perhaps one reason the labor movement has been more successful and influential in Sweden is that in most people's minds unions are seen as being on the side of morality.

140. *See* M. HANCOCK, *supra* note 135, at 71.

141. For example, President Reagan had never met some of his own cabinet members prior to their selection. *The Making of the Cabinet*, NEWSWEEK, Jan. 12, 1981, at 29.

142. S. KELMAN, *supra* note 6, at 162.

143. *See supra* note 18 and accompanying text.

144. Lagen om Arbetarskyddsavgift, SFS 1971:282, *amended by* SFS 1972:567, 1973:488, 1973:835, 1974:796, 1975:353, 1976:80, 1977:1040, 1977:1164, 1978:874, 1979:655, 1980:320 (1971). This Act has been amended several times. The exact percentage of the tax has increased over the years. In addition to funding for the education of safety stewards, the tax is also used for management education, research and development, public information, and education on worker democracy.

145. *Id., as amended by* SFS 1974:796 (1974).

ment," and was compiled by the Joint Industrial Safety Council. The emphasis is on the relevance of the material to the steward's own workplace. Study groups, in which a trained discussion leader guides a small number of workers through the course material are the preferred method of teaching.

Each of the nine units in the course is accompanied by questions for discussion, and four slide shows supplement the written material. There are several topics in each unit, and a unit corresponds to what can be covered in a study session. The course covers such topics as noise, chemical risks, ergonomics, risks connected with machinery and equipment, first-aid, and psycho-social problems. The last two units explain how to conduct an on-the-job inspection and how the laws and collective bargaining agreements can be put into practical effect.

Between 1974 and 1977, 124,500 persons took the basic course.[146] A 1980 survey by LO indicated that seventy-four percent of the safety stewards who responded had received some form of work environment education.[147] Ninety-two percent of these persons had taken the basic course. Moreover, thirty-one percent had obtained further and more specialized training.[148] At many of the larger workplaces, unions now have representatives who specialize in chemical risks and ergonomics, and safety stewards who are responsible for a particular shift or division.[149]

Safety stewards can pursue complaints more effectively and aggressively now that they have the proper education. One management representative indicated that since the education program began, the number of questions about occupational safety and health problems and the level of activities had increased dramatically. At the same time he noted that his job as a safety engineer had become more enjoyable because the questions and problems presented to him were more

146. STATISTICAL YEARBOOK, *supra* note 59, at 234. Approximately one-third of those taking the basic course were management personnel.

147. D. LANDSORGANISATIONEN, VAD HÄNDER MED ARBETSMILJÖN RAPPORT OM LO—MEDLEMMARNAS OCH SKYDDSOMBUDENS ERFARENHETER 160 (1981) [hereinafter cited as LO REPORT].

148. The Joint Safety Council has developed several additional courses which build on the material in "Better Working Environment." Study material is now available (sometimes in languages other than Swedish) for the following courses: 1) Vision and Lighting, 2) Noise, 3) Ergonomics, 4) Local Safety Work, 5) Planning, 6) Health Risks from Chemicals at the Workplace, 7) Transportation of Dangerous Products, 8) Alcohol and Drug Abuse at Work, 9) Working with Epoxy, and 10) Working with Isocyanates.

149. Interview with Lars Ryding, Head Safety Steward, and Åke Nilsson, Safety Engineer, Domnarvets Järnverk, Borlänge, Sweden (July 23, 1981).

knowledgeable and intelligent.[150]

No such educational program on a similar scale has ever been attempted in the United States. If the United States were to launch a program comparable to Sweden's, it would involve educating approximately 3.5 million safety stewards.[151] A few scattered efforts in this country have been made to educate workers about occupational health and safety matters.[152] Most large unions in the United States, however, continue to emphasize political rather than educational activities.[153]

C. The System of Safety Stewards and Safety Committees

The system of safety stewards and safety committees was first established in Sweden by contract in 1942.[154] Nonetheless, it was not until the early 1970's that safety stewards and committees were given any real power. "Following the 1942 agreement, safety stewards and safety committees were appointed all around the land. But for almost the next thirty years, they maintained what we could call a 'low profile.' In the less discrete [*sic*] vernacular of the time nobody seemed to care about them."[155]

Instead of eliminating safety stewards because of their ineffectiveness, however, it was decided that their role should be strengthened:

> When it was concluded in America that previous occupational safety and health programs done at the state level and based on "voluntary compliance" were not working well enough, the first thing done was to make enforcement more punitive in the new federal program. A band of inspectors was sent out with orders to find, and fine, violations. In Sweden, the first thing done was to revitalize the role of the safety steward.[156]

Educating the stewards was an important first step. In addition, the legislative reforms of the early 1970's provided the stewards with the capability to effectuate their newly acquired knowledge. By statute, safety stewards are authorized to halt work if there is an immediate and

150. *Id.*

151. This figure is based upon the author's own calculations comparing the populations of the two countries with the number of educated safety stewards in Sweden.

152. The University of Wisconsin School for Workers, for example, has had a successful training program. OSHA's Director for Region V attributed a 900% increase in the number of complaints in 1972 to the activities of the School for Workers and other groups sponsoring worker education programs. N. ASHFORD, *supra* note 26, at 485-86.

153. *Id.* at 485.

154. *See supra* note 54.

155. Kelman, *supra* note 137, at 7.

156. *Id.*

serious danger to life or health[157] and to take paid time off from their regular jobs to perform their duties.[158] Safety stewards have a right of access to all documents and information that is relevant to their activities.[159] Moreover, employers have an affirmative duty to consult with and inform safety stewards about any changes which might affect the working environment in a safety steward's area.[160] Safety stewards also have a virtual veto right over the construction of new buildings, since the authorities which approve building permits must consult with safety stewards prior to approval.[161]

The Swedish Working Environment Act protects safety stewards against discrimination resulting from their exercise of any powers afforded them under the Act.[162] In addition, if an employer or employee hinders a safety steward from performing his or her duties, or if a safety steward is provided with inferior working conditions, the person causing such hinderance is liable for damages.[163]

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157. AML, ch. 6, § 7. The safety steward's authority to halt work continues until an inspector from the Labor Inspectorate determines whether the work stoppage is justified. Safety stewards are not responsible for reimbursing employers for any loss caused by a work stoppage.

In a 1981 motion to the LO convention, the Metal Workers Union charged that there has been a dramatic drop in work stoppages since the issuance of a decision by the Labor Court, AD Dom Nr. 164/165. The motion cited statistics indicating that the right to stop work was invoked 167 times in 1978, 171 times in 1979, and in 1980, just 99 times.

The Metal Workers are pushing for a change in the law to make it clear that employees involved in a work stoppage are entitled to pay during the time of the work stoppage. Although it is clear that safety stewards are entitled to pay during a work stoppage (the law provides that they cannot be penalized for their activities), the court held in Deceision Nr. 164/165 that workers involved in a work stoppage should only receive wages for the time off if the safety steward's decision was authorized by language in the Working Environment Act. The Metal Workers contend that the question of pay for co-workers should not come in as an additional variable when the safety steward already is forced to make the difficult choice of whether work is so dangerous that it should be stopped or that it may be continued without risk to employees. Motioner till LO Kongressen, Motion II, Svenska Metallindustriarbetareförbundet 210 (1981).

158. AML, ch. 6, § 5.

159. *Id.* ch. 6, § 6.

160. *Id.* ch. 6, § 4.

161. Ordinance, *supra* note 78, § 117. The Ordinance provides that the Labor Inspectorate must review all requests for building permits to ensure that requirements of the Working Environment Act have been fulfilled. In addition, a safety steward or other employee representative must be given an opportunity to comment on the request. In practice, if the safety steward has sound objections to the proposed building, and the builder refuses to comply with the suggested changes, the permit is usually denied. Interview with Birger Wiklund, Public Information Officer, Arbetslivscentrum, in Stockholm, Sweden (July 20-21, 1981).

162. AML, ch. 6, § 10.

163. *Id.* ch. 6, § 11. The measure of damages may include factors other than those purely economic.

The new statute provides that there is to be one or more safety stewards at every place of employment where at least five persons are regularly employed.[164] There is no maximum number of safety stewards. The number of safety stewards is dependent upon the occupational hazards inherent in a particular operation and the distance between workplaces. Where work is performed in shifts, a safety steward may be appointed for each shift.[165] The final decision regarding the number of safety stewards is to be made by the safety committee, or, if there is none, in consultations between the employer and the union.[166]

Safety committees are to be established at every workplace where at least fifty persons are regularly employed.[167] The functions of the safety committee are to establish long term goals and plan the daily health and safety activities. A significant contractual gain realized by the unions was the provision for employee majorities on safety committees.[168] Moreover, at least one of the employer representatives is to hold a managerial or equivalent position.[169] Employer representatives are to be appointed to the positions of secretary and chairperson of the safety committee.[170]

An important task of the safety committees is to oversee company health services.[171] The committee must establish routines and submit budget proposals for the company health services, and it possesses the ultimate authority regarding the hiring of company doctors and safety engineers.[172] By virtue of their majority on the committee, employees thus have a strong voice in deciding which professionals will be performing occupational safety and health work on a daily basis.

One common complaint about safety committees is that they are rarely provided with a budget. In LO's 1980 survey of safety stewards,

164. *Id.* ch. 6, § 8.

165. SAF/LO/PTK Agreement, *supra* note 18, § 4, Remarks.

166. *Id.* § 4.

167. AML, ch. 6, § 8.

168. "Unless otherwise agreed, the employer is entitled to appoint a number of members which is one less than the number of employee representatives on the committee." SAF/LO/PTK Agreement, *supra* note 18, § 17. The author is currently working in Sweden on a research project for the National Board studying the effects of the new law at the local level. The preliminary results of this study indicate that formal voting rarely takes place in safety committees. This finding suggests that the union majority on safety committees is not nearly as important a reform as unions had hoped.

169. *Id.* This requirement helps to ensure that someone with the authority to make decisions is involved in the safety committee's work.

170. *Id.*

171. *Id.* § 18, clause 5. *See infra* notes 197-205 and accompanying text.

172. *Id.*

only eleven percent indicated that the safety committee at their place of employment had its own budget.[173]

The best method of determining how safety stewards and safety committees actually function is to examine individual workplaces. Domnarvets Järnverk, a large steel mill located three hundred kilometers north of Stockholm, has an effective program that merits a closer examination. Two hundred eighty-two safety stewards represent the 4800 employees, a ratio of approximately one steward for every seventeen employees.[174] In addition, there are a total of forty-five safety committees in different departments of the plant. Each committee meets three times per year and conducts inspections at those times. There is also a central safety committee which meets four times per year. At each of these four meetings, a plant-wide inspection is conducted.

Domnarvet is currently implementing a huge program of modernization. In fact, it is the second largest industrial building project in Swedish history.[175] There are twenty-five project groups involved in the planning of the expansion, each with union membership and input. Union representatives have travelled to Japan, the United States, Canada, and Italy to become more fully informed about proposed changes which might affect worker health and safety.[176]

Domnarvet's ambitious health and safety program probably represents what lawmakers envisioned when the Working Environment Act was written. Nonetheless, Domnarvet is an exception to the general rule in Sweden. Most businesses are currently unable to make such large investments in new equipment and facilities because of the sluggish economy. Much of the new law presupposed a healthy economy,[177] and some observers speculate that the current stagnation in efforts to improve the working environment are due to the economic downturn experienced in Sweden during the past few years.[178]

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173. LO REPORT, *supra* note 147, at 143. Some safety stewards believe that a safety committee should not be provided with a budget. It is their position that working environment outlays should be considered a normal part of the company budget, *i.e.*, one of the costs of production. Interview with Nils Storbacke, Head Safety Steward, Smedjebacken Boxholm Stål AB (Dec. 8, 1982).

174. Interview with Lars Ryding, Head Safety Steward, and Åke Nilsson, Safety Engineer, Domnarvets Järnverk, Borlänge, Sweden (July 23, 1981).

175. *Id.*

176. *Id.*

177. For example, the union's veto right over new buildings is only an effective measure in an expanding economy.

178. Interview with Eva Kvarfort, Arbetslivsfonden, Stockholm, Sweden (July 21, 1981). Other persons are less equivocal, attributing the slow-down in efforts to the bourgeois coali-

Despite this perceived slowdown in improvement efforts, it is clear that the power of employees to influence the conditions of their workplaces in terms of their own health and safety is considerably greater in Sweden than in the United States. There is nothing in the United States comparable to the safety steward/safety committee system in Sweden, although a few unions (notably the UAW and OCAW) have obtained contractual provisions for setting up labor-management health and safety committees, union inspections, and rights of access to information.[179] As mentioned previously, some new employee participation programs that would involve a diminished role for OSHA have been proposed, but these programs are still in an experimental stage.[180]

Many of the rights granted safety stewards in Sweden are also accorded to workers in the United States, regardless of their status. For example, under OSHA regulations, an employee may not be disciplined for walking off the job if: 1) he or she reasonably and in good faith believes that performing assigned work would involve a real danger of death or serious injury; 2) the employee was unable to obtain correction of the condition by the employer; and 3) there is insufficient time to eliminate the danger through administrative channels.[181] This regulation was unanimously upheld by the United States Supreme Court.[182] This right of an individual worker to walk off dangerous jobs is not as broad, however, as the right of safety stewards to completely halt dangerous work.

Section 11(c) of the OSHA Act prohibits discrimination against any employee who has filed a complaint or exercised rights afforded by the Act. The comparable provision under the Swedish Act refers only to safety stewards.[183] An additional protection which is provided by statute for United States workers is the right of access to records concerning their exposure to toxic substances or harmful physical agents.[184] The Swedish right of access to employer records, however, is much broader. Although the right is not extended to all employees, safety stewards have a right of access to all documents and information that is relevant to their activities.

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tion government. Interview with Birger Wiklund, Public Information Officer, Arbetslivscentrum, in Stockholm, Sweden (July 20-21, 1981). The bourgeois parties had a majority in the *Riksdag* between 1976 and 1980. (Author's note).

179. N. ASHFORD, *supra* note 26, at 494-95.

180. *See supra* notes 60-64 and accompanying text.

181. 29 C.F.R. § 1977.12(b)(2) (1977).

182. Whirlpool v. Marshall, 445 U.S. 1 (1979).

183. AML, ch. 6, § 10.

184. 29 C.F.R. § 1910.20 (1980).

D. Democracy at the Workplace

The new Swedish law is designed not only to ensure a safe workplace, but also to "attain labor relations whereby work can be experienced by the individual as a meaningful and enriching part of life."[185] This goal was articulated by the Labor Minister in his commentary accompanying the proposed legislation:

> The basic objective in the Working Environment Act ought to be that work should be free from risks in both physical and mental respects to the utmost extent possible, but it also should provide opportunities for involvement, satisfaction in one's work, and personal development. This purpose can best be expressed by stating in the text in a clear and positive way that workers should be able to influence their own work situation.[186]

Worker involvement is thus not only the means for achieving the goals of the Act, but one of the ends of the Working Environment Act.

Consequently, when decisions are being made about the way work is to be organized, the extent to which a worker's responsibility and independence are affected should be taken into consideration. Much of the emphasis in the new law is on planning. Thus, in the planning stages, aspects to be considered include how the speed of work, the machinery used, and the working hours affect job satisfaction.

Worker participation in the planning of occupational health and safety activities also aids the achievement of these goals. Thus, the increased rights and duties of the safety stewards help to accomplish the aim of increased democracy at the workplace and to fulfill an enforcement function.

The new Working Environment Act should be viewed in its context. It is one in a series of important labor law reforms passed during the 1970's attempting to increase worker input and control over the workplace. Other noteworthy reforms include the Democracy at Work Act,[187] the Law Regarding the Status of Elected Union Representatives,[188] and the Law on Employment Security.[189]

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185. Proposition, *supra* note 32, at 27.

186. *Id.* at 227.

187. SFS 1976:780.1. The Democracy at Work Act, or Codetermination Law, as it is also called, reversed the presumption in Swedish law that negotiations between employer and employees could only relate to questions regarding pay and benefits. Instead, it required employers to initiate negotiations with unions whenever a substantial change in operations or a change in an individual's conditions of employment are contemplated. The Act also provides unions with a broad right of access to company documents and information.

188. SFS 1976:580. The Law Regarding the Status of Elected Union Representatives gave union representatives the right to conduct union business during paid work time so

In contrast to the Swedish situation, democracy at work has never been one of the goals of the OSHA Act. Furthermore, in the United States there is no duty to bargain over job satisfaction or worker participation in decision-making, since such subjects would be considered to be within the "core of entrepreneurial control."[190]

E. Looking at the Total Work Environment

One of the reasons for an entirely new Swedish law was to shift the emphasis from concentrating solely on the elimination of physical occupational risks to an evaluation of the total work environment, including psychological and sociological factors.[191] The new law therefore requires a consideration of how work affects the employees' mental as well as physical well-being.

Exactly what is meant by "psycho-social" factors is not easily explained, but as the Minister of Labor suggested, it is perhaps best understood as just one of many interrelated factors which affect the work environment.[192] These factors include purely physical environmental factors, such as noise, climate, light, radiation, and vibrations.

In addition, there are chemical environmental factors such as dust, solvents, and other substances released into the air at the workplace. The amount of strength required for the job, the positions in which work is performed, and the amount of space available are ergonomic factors affecting the work environment. Finally, the way work is organized also affects the total work environment. This would include such factors as the pace and type of work, as well as the kind of opportunities available for contact with others, and for personal development.[193] All of these factors are interrelated and can affect one

long as the employer is consulted first, and the time off is reasonable in relation to the conditions at the workplace. Union representatives may not be discriminated against, and they have the right to use space at their employer's locale to conduct union business.

189. SFS 1974:12. The Employment Security Act provides a great deal of protection for Swedish workers against unfair firings and layoffs. An immediate firing may occur only if a worker has seriously neglected his or her responsibilities. For example, isolated instances of dishonesty or other misbehavior are not considered grounds for firing. If a worker is to be let go because of lack of work, an employer normally must continue to pay him or her full wages and benefits for six months. Although layoffs because of lack of work are permitted, employers must pay full wages and benefits if the layoff is to last longer than two weeks. Furthermore, if an employer is found guilty of violating the law, he or she may be liable for back wages, damages to the employee and the union, and the employee may be reinstated.

190. Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203, 223 (1964).

191. Proposition, *supra* note 32, at 223.

192. *Id.*

193. *Id.* at 58.

another. For example, there can be psychological effects resulting from a job injury that have physical causes, and there can be physical effects resulting from psychological and sociological problems at work.

What kinds of inquiries is a Swedish employer expected to make in this regard? The Commission that drafted the proposal for the new law provided some practical illustrations of when psycho-social factors are relevant. In the evaluation of the noise level, for example, not only should the harmful physical effects be taken into account, but also the extent to which noise contributes to social isolation.[194] When different ways to organize a workplace are being considered, the potential for stress or monotony should be examined, since both of these factors can affect a person's physical and mental well-being.[195] The Commission also noted that jobs in the computer field and jobs involving payment on a piecework basis are two areas that deserve careful scrutiny in this regard.[196]

In the United States, very little has been done in the area of "psycho-social" occupational risks. Section 2.5 of the OSHA Act indicates that Congress intended to create a safer workplace by providing for, among other things, "research in the field of occupational health and safety, including psychological factors." This section is the only reference in the Act which calls for a consideration of psychological factors. Apparently, this factor was not of primary importance since little has been done in this area since the OSHA Act was passed.

F. Company Health Services

The purpose of company health services is "to monitor the conditions which can affect the state of health and job adaptation of employees . . . and to assist in providing the information necessary for making decisions on measures to be adopted by the company to improve the working environment."[197] Such services have been established pursuant to voluntary agreements between the labor market parties in Sweden. The goal is to expand such services to cover all places of employment in the country.[198]

Company health services are expert advisory bodies. They may be a separate entity within the company, or smaller firms may band to-

194. *Id.* at 224.
195. *Id.* at 59.
196. *Id.* at 60, 61.
197. SAF/LO/PTK Agreement, *supra* note 18, at 39, 41.
198. *Id.* at 36.

gether to form joint company health centers.[199] They normally have two units: the technical section, which includes safety engineers and industrial hygienists, and the medical section, which includes doctors and nurses trained in occupational medicine.[200]

The basic focus is preventative. Some of the more specific functions of company health services are: 1) to participate in the local safety work through recurrent safety rounds and reports to the safety committee; 2) to provide advice and instructions to safety committees and safety stewards; 3) to sample and analyze data from prevailing working environmental conditions; 4) to assist in deciding what measures should be adopted to eliminate undesirable conditions; 5) to study ergonomic factors and participate in ergonomic planning; 6) to trace the effects of environmental factors on the employees by means of systematic health check-ups; 7) to assist in placing the employees in the most suitable jobs through different forms of follow-up health check-ups; and 8) to contribute rapid and effective rehabilitation in the event of ill health and failing working capacity.[201]

Nearly all of the larger firms as well as most state, county, and municipal employers have put company health services into operation.[202] Progress has been much slower, however, in enlisting smaller firms to participate.[203] Currently, about one-half of all employees in Sweden have access to company health services.[204] Of course, company health services are a benefit over and above the free public health care to which all Swedes are entitled.[205]

IV. PROBLEM AREAS

A. Rulemaking

The National Board of Occupational Safety and Health is currently receiving a great deal of criticism from the labor movement in Sweden for not issuing more binding regulations.[206] The Board has the power to issue binding regulations coupled with sanctions, or less strin-

199. *Id.* at 37.

200. *Id.* at 39-40.

201. *Id.* at 43-47.

202. LO Krav På Arbets Miljön 33 (1981) (Report on the Working Environment to the 1981 LO Convention) [hereinafter cited as LO Demands].

203. *Id.*

204. *Id.*

205. Except for small token charges, the Swedish government pays all hospital costs, prescribed drugs, lab fees, and visits to doctors at public outpatient clinics. Fact Sheets on Sweden, The Swedish Institute (May 1982).

206. *See infra* notes 209-10 and accompanying text.

gent guidelines which require the Labor Inspectorate to issue a ruling prior to the imposition of sanctions.[207] Since the new Act was passed, however, only a small number of regulations issued by the Board have been accompanied by sanctions. Recently, the Board issued a new list of threshold limit values (TLVs) which became effective January 1, 1982. No sanctions have been attached to the new TLV standards.[208]

The Metal Workers Union is so dissatisfied with this state of affairs that it has called for a total overhaul of the law. Concerning the paucity of binding regulations, the head of the Metal Workers Union, who also was a member of the Commission which wrote the new Act, made the following statement:

> [W]e have to reassess whether the Act can be changed so that the regulations are compulsory. The fact that the Board has the *option* of imposing punishment doesn't mean that it actually does so.
>
> The stipulated sanctions are the most important point. The Act does not contain sufficiently strict rules. The sanctions must be tightened up so that employers are *compelled* to follow the regulations. Today they are violated without anything happening.
>
> We thought the regulations would involve considerably greater use of sanctions and I was personally convinced that the stipulated punishments would have a much greater impact than they actually did.[209]

The Factory Workers Union has also expressed dissatisfaction with the small number of binding regulations issued since 1978, the year the Act became effective. Moreover, the Union contends that the binding regulations that have been issued concern less important areas, such as the duty of employers to measure pollutants in the air and to conduct certain medical examinations.[210] From the Union's standpoint, this approach is the opposite of the way things should be—the more serious violations should be coupled with sanctions.

People who work with occupational safety and health at the local level seem less concerned that the guidelines do not have the force of law. The head safety steward at Domnarvets Järnverk felt that this fact did not represent a particular problem for him in his daily work.[211] A

207. AML, ch. 5, §§ 12-18.

208. Winiarski, *The Working Environment Act After Three Years*, 1981 WORKING ENV'T 42-43.

209. *Id.* at 42.

210. Motioner till LO Kongressen, Motion Iz, Sv. Fabriksarbetareförbundet 219 (1981).

211. Interview with Lars Ryding, Head Safety Steward, and Åke Nilsson, Safety Engineer, Domnarets Järnverk, Borlänge, Sweden (July 23, 1981).

management representative at Domnarvet stated that the company considers itself bound by the guidelines regardless of their exact legal status.[212] It is possible that many persons are unaware that the new regulations are not binding.

Another problem is that some of the regulations are vague. The noise regulation is replete with expressions such as "if possible."[213] The regulations on psycho-social aspects of the workplace are so vague that they sound more like a list of platitudes than regulations.[214]

The new Act itself is extremely vague. For example, chapter 2, section 1 of the Act states that the "work environment shall be kept in a satisfactory state having regard to the technological progress occurring in the community at large."[215] It is unclear what methods inspectors are expected to use to determine whether the work environment has kept up with the technological progress occurring in the community. Section 8 of the same chapter states that "spaces and facilities for personal hygiene, meals and rest . . . are to be provided to the extent appropriate to the nature of the work and the needs of the employees."[216] Phrases like "to the extent appropriate" would seem to invite litigation. To date, however, few attorneys have taken advantage of potential loopholes like these to challenge the application of regulations or the law to particular employers. At least one expert predicts, however, that there will be more interest in such attempts if the regulations become coupled with compulsory sanctions.[217]

A third problem with the Swedish regulations is the procedure followed for their adoption.[218] To observers from the United States, the Swedish rulemaking procedure of utilizing bipartisan groups to work out draft texts of rules seems undemocratic. Although there is no evidence that the system has been abused, the potential for abuse exists.[219]

Nonetheless, certain alterations in Swedish procedure increasing the opportunity for democratic input could perhaps be implemented without changing the basic format. For example, it would be beneficial to publish the drafts of the regulations so that those persons not in the leadership of the groups drafting the regulations might have an oppor-

212. *Id.*
213. *Id.*
214. Psykiska och Sociala Aspekter På Arbetsmiljön, AFS 1980:14 (1980). An English translation of a summary of the new guidelines is set out in Appendix II, *infra* pp. 353-54.
215. AML, ch. 2 § 1.
216. *Id.* ch. 2, § 8.
217. Interview with Lundberg, *infra* note 249.
218. *See supra* notes 65-69 and accompanying text.
219. *See supra* notes 73-77 and accompanying text.

tunity to express their views.[220] Furthermore, it would not be burdensome to require the agency to explain its reasons for adopting a particular regulation. It is less certain that judicial review would improve the rulemaking process in Sweden. In the United States, such review certainly prolongs the process and channels a considerable amount of time and resources into legal battles.

B. Case Law

The Swedish legal system, though it contains characteristics resembling both the civil law and the common law, is in fact indigenous, dating back to the twelfth and thirteenth centuries.[221] Greater importance is attached to statutory law in Sweden than in Great Britain or the United States, yet Swedish law is not an attempt to encapsulate all law in one document like the French and German codes.[222] Precedent, however, is considerably less important than in the United States.

> The decisions of a higher tribunal do not bind the lower courts in Sweden. Each judge applied "the law" as he sees it. He may be influenced by the decisions of other jurists, particularly if he respects their competence, but in the final analysis each judge is solely responsible for his own decisions. But, if Swedish courts do not follow precedent to the same extent as American courts, they are not totally blind to its implications. Lower courts do in fact watch closely the decisions of the Supreme Court, even though they are not legally bound by them.[223]

In practice, the difference between the two countries may not be so great. Although a judge does not commit an error if he or she chooses not to follow Supreme Court precedent, the case will in all likelihood be overruled, if appealed.[224] In addition, precedent has taken on a more important role in recent years as the *Riksdag* has increasingly relied on "frame law" legislation, like the Working Environment Act,[225] rather than specifying all of the regulatory details in the text of

220. Under normal Worker Protection Board procedure, the drafts receive rather wide circulation—they are typically distributed to the district offices of the Labor Inspectorate, other agencies, and to organizations not involved in the small group negotiations. They are not, however, made public.

221. J. BOARD, *supra* note 21, at 173.

222. *Id.*

223. *Id.* at 177.

224. Interview with Lana Blomquist, Staff Attorney, Swedish Supreme Court, Stockholm, Sweden (Feb. 23, 1983).

225. *See supra* text accompanying note 29 for a discussion of the characteristics of the Working Environment Act which make it a "frame law."

the Act.[226]

The lack of awareness about occupational safety and health decisions among people in the field is thus somewhat surprising. Inspectors at the Falun District Office of the Labor Inspectorate, for example, possessed little knowledge of decisions rendered by their own agency and were not particularly appreciative about efforts to increase their awareness.[227] Union officials were only familiar with cases affecting their own particular union.[228] Remarkably, the National Board does not even transmit information to the Labor Inspectorate district offices regarding Board decisions that have been appealed to the Executive Office.[229]

It is very difficult to find out about the different judicial and administrative cases concerning the working environment. There is no publication which indexes all of these cases, nor is there much legal analysis. Sweden lacks a forum comparable to the many law reviews and journals in the United States which routinely contain articles on occupational safety and health.

One must therefore consult the collections of cases published by the different courts and agencies. The Labor Court publishes a concise summary of its cases once a year. About fifteen decisions concerning the working environment have been issued by the Labor Court to date, and they are not difficult to find.[230] The National Board, however, which issues close to 100 decisions every year, has no index or summary of its decisions.[231] Thus, one must read all of the Board's cases in order to determine the Board's position on a particular issue.

Another problem with the Board's decisions is that they are poorly written. Almost no facts are recited, and boilerplate rationales are used

226. Interview with Lana Blomquist, Staff Attorney, Swedish Supreme Court, Stockholm, Sweden (Feb. 23, 1983).

227. The author compiled a summary of the Board's decisions during her employment at the Falun Labor Inspectorate District Office. This summary was distributed to inspectors, but according to the office attorney, inspectors made little or no use of the summary. Interview with Helena Striwing, Attorney, Falun Labor Inspectorate District, Falun, Sweden (Aug. 9, 1981).

228. Interview with Stig Marklund, Working Environment Ombudsman, Metal Workers Union, Stockholm, Sweden (Aug. 9, 1981). *See also supra* note 120.

229. Interview with Helena Striwing, Attorney, Falun Labor Inspectorate District, Falun, Sweden (Aug. 9, 1981).

230. The decisions of the Labor Court are published in bound volumes entitled *Arbetsdomstolens Domar*.

231. The Board compiles the decisions in an unbound volume entitled *Arbetarskyddsstyrelsens Beslut i Besvärsävende*. Less than 100 copies are published yearly, most of them intended for internal use. Telephone interview with Ingegerd Halzius, Secretary for Legal Division, National Board, Stockholm, Sweden (Feb. 15, 1978).

in most decisions. Cases rarely turn upon the interpretation of a particular regulation or section of the Act, but rather upon the Board's judgment of what was "reasonable under the circumstances."

Perhaps because of the civil-law tradition, many Swedes are reluctant to rely on precedent, which is regarded as an outdated device to preserve the status quo rather than as a helpful tool. This distrust of the use of stare decisis seems warranted in connection with Board decisions, since taken as a whole, they do tend to preserve the status quo. A study of the Board's decisions during 1979 showed that in three quarters of the cases appealed by employers, the requested remedy was either totally or partially granted.[232] The situation was exactly the opposite with respect to cases appealed by safety stewards: they lost their appeals seventy-three percent of the time.[233] Furthermore, even when employers lost their appeals, the Board frequently granted concessions in the form of lowered penalties or delays in the time required to remedy hazards.[234] The Board has thus been very lenient toward employers. One Labor Inspectorate attorney characterized the Board's posture as follows: "They will take bold action in the case of an obvious and very dangerous occupational accident. In other cases, however, the Board will tread carefully, especially if the remedy will be expensive or might set a precedent."[235] Since few employers appeal decisions of the Labor Inspectorate,[236] many of them are probably unaware of the fact that they have an excellent chance of success by complaining through the administrative system.

Nevertheless, the Board's decisions are important, since it is the governmental unit with the most expertise in these matters. Unions, inspectors, and judges in the regular court system need guidance on how particular fact situations can be resolved. A thorough study of the Board's cases should be made in order to document and publicize these allegations and suggest ways of making the cases more accessible. It is hoped that the effect of such an analysis would not be to encourage employers to use the administrative system for purposes of delay, but rather to encourage those interested in a more efficient and effective administration of these decisions to press for reforms. A similar analy-

232. L. LUNDBERG, FRÅN LAG TILL ARBETSMILJÖ 122 (1982).

233. *Id.*

234. *See supra* note 119.

235. Interview with Helena Striwing, Attorney, Falun Labor Inspectorate District, Falun, Sweden (June 10, 1981).

236. There are only 80 to 100 appeals per year and many of them are brought by individual safety stewards or unions.

sis of the decisions of the Labor Court and the Municipal Courts would also be helpful.

C. Compliance

The implementation of procedures to ensure compliance with the new Act is one area which clearly needs improvement in Sweden. Many practices within the Labor Inspectorate are questionable. Much of the problem is due to the lack of guidance and control from the National Board. Although Sweden generally has a superior program when it comes to substantive measures to improve the working environment, Sweden should look to the United States for ways to improve internal administrative procedures.[237] Five specific problem areas are discussed below.

1. Citations

The small number of citations is the most serious compliance problem. Less than one percent of all inspections each year result in a citation.[238] A major objective of the new Act was to expand the power of the administrative agencies to issue punitive sanctions.[239] An additional problem is that citations are not always accompanied by monetary penalties. Five districts surveyed in one study never issued monetary fines.[240]

Few citations are issued in part because it may be years before the Labor Inspectorate concludes that an employer has been uncooperative. Prior to that time, phone calls are made, written notices are issued, and personal visits are made by inspectors to induce employers to voluntarily comply.[241] One researcher, Lars Lundberg, examined the files of seven Labor Inspectorate offices and analyzed all of the citations issued by those offices between 1976 and 1978. The longest period of time between the issuance of a written notice by a Labor Inspectorate office to remedy a situation and the issuance of a sanction was sixteen years.[242] At another employment site, where the employees worked with arsenic, the employer kept promising to provide proper

237. Reference is made here to internal administrative procedures of pre-Reagan OSHA. Other countries may also have a tighter system of occupational safety and health administrative procedures that would be worth examining.

238. Lundberg, Preliminary Results, *supra* note 82, at 2.

239. Proposition, *supra* note 32, at 367-74.

240. *Id.*

241. This information is based upon the author's experience working as a legal intern at the Falun Labor Inspectorate District Office during the summer of 1980.

242. Lundberg, Preliminary Results, *supra* note 82, at 5.

shower and changing facilities. After eight years, the Labor Inspectorate finally issued a citation.[243]

The rarity of citations is seldom mentioned as a problem with OSHA. As of October 1981, OSHA had conducted over 540,000 inspections and cited over 1.8 million violations.[244] The average number of citations issued by OSHA is between three and four per inspection.

2. Record Keeping

Examples of poor record keeping are commonplace in Labor Inspectorate district offices. It is not unusual for inspectors to neglect to keep any written record of inspections, verbal warnings, phone conversations, or dates by which conditions are to be remedied.[245] It is thus often impossible for anyone, other than the inspectors, to ascertain the status of a case.

This situation becomes problematic when an inspector quits or retires. His or her replacement will not know whether an employer has remedied a hazard, partly complied with oral instructions given by the inspector, or done nothing. Presumably the whole process of an inspection, written notices, and follow-up phone calls will have to be repeated. It is not surprising, therefore, that there are occasionally long delays before citations are issued in Sweden.[246]

3. Inspections

The National Board of Occupational Safety and Health provides little guidance on which workplaces should be given priority for inspections. This decision is apparently left to the discretion of the individual inspector. It might be assumed that workplaces with the worst working environments would be given top priority, but this approach is not taken. According to Lundberg's statistical analyses, the most important factor in determining which site to inspect is whether a safety steward has called the Labor Inspectorate asking for advice or a visit.[247] Accidents also prompt more visits.[248] Lundberg found, however, that a sub-

243. *Id.*

244. M. ROTHSTEIN, *supra* note 23, § 221 (Supp. 1982).

245. *See supra* note 241.

246. The Falun Labor Inspectorate District Office has attempted to redress this problem. After considerable opposition on the part of the inspectors (who took the change as a personal affront), the office secretaries instituted a reminder system. Under this system, a note is sent to each inspector whenever a time limit has passed for an employer to have taken a specific action. *See supra* note 241.

247. Lundberg, Preliminary Results, *supra* note 82, at 12.

248. *Id.*

stantial proportion of worksites with serious problems do not get visited by the Labor Inspectorate. He therefore concluded that the Labor Inspectorate takes a passive attitude, reacting to demand rather than to need.[249]

In contrast, OSHA has established a rather detailed set of workplace priorities. In order of priority, OSHA conducts inspections of: 1) imminent dangers; 2) catastrophes and fatalities; 3) employee complaints; 4) high accident-rate industries; and 5) workplaces (random inspections).[250]

4. Lack of Uniformity Between Districts—Penalty Assessment

The National Board in Sweden exercises little control to ensure that the law is implemented uniformly among the different districts. As was mentioned previously, the Board itself compiles few statistics on individual inspectors or district offices.[251] The statistics compiled by Lundberg show that there is a large variation between the different districts with respect to the frequency of sanctions and the use of monetary penalties. One district office, Växjo, utilized sanctions ten times more often than Mälmo, the most lenient district office.[252] Lundberg was unable to compare the size of monetary penalties awarded, however, since this information is not compiled by the agencies.[253]

In contrast, detailed formulae for calculating penalties have been devised at OSHA to promote consistency in penalty assessment.[254] The OSHA Act itself provides for monetary penalties ranging from zero dollars for a de minimus notice to ten thousand dollars for a willful violation.[255] Penalties are based primarily on the gravity of the violation. There is also a procedure for reducing penalties, depending upon the size of the business, the employer's compliance history, and the em-

249. Interview with Lars Lundberg, doctoral candidate, Uppsala Univ., Uppsala, Sweden (Aug. 5, 1981). Lundberg compiled statistics with respect to several variables to discover actual inspection priorities. One variable, shown by Lundberg's computation to be just slightly under statistically significant, was distance from the Labor Inspectorate district office. A statistically significant result would have implied that inspectors chose worksites that were farther away in order to earn extra money on travel expenses, rather than choosing worksites based upon some factor having to do with the working environment.

250. M. ROTHSTEIN, *supra* note 23, at 214.

251. *See supra* note 85 and accompanying text.

252. Lundberg, Preliminary Results, *supra* note 82, at 2.

253. When Lundberg contacted the Legal Division at the National Board, he was told that they did not know how high the districts set their penalties or what factors were considered in determining the size of penalties. *Id.* at 3.

254. M. ROTHSTEIN, *supra* note 23, at 324.

255. OSHA Act, *supra* note 27, § 17.

ployer's good faith.[256] The size of penalties is one of the many types of information which OSHA computerizes for comparison purposes.[257]

5. Attitudes of Inspectors

The attitude of Swedish labor inspectors is strange when one considers that their role is to enforce the law. In a questionnaire asking inspectors to identify the qualities that make a good inspector, knowledge of rules was given the lowest rating, while flexibility was ranked highest.[258] When asked what positive changes could be made by government to improve the working environment, the inspectors responded that stricter penalties and more binding regulations were the least important of the several alternatives listed.[259]

One inspector stated that "every citation means that someone hasn't done their job right."[260] Another inspector, when asked what he thought about imposing first-instance sanctions, responded, "No, if we did that an inspector would never again feel welcome at any company."[261] What these inspectors were expressing, perhaps, is the notion that more can be accomplished by convincing the employer of the benefits of safety and health measures and by giving friendly advice than by insisting on a strict and overly formalistic interpretation of the law. Because inspectors are assigned an ambiguous, dual role involving both enforcement and advising, Lundberg concluded that such attitudes on the part of inspectors are consistent with the instructions they receive from the National Board.[262]

Recently, this dual role of inspectors has come under attack. It has been suggested that promoting camaraderie between inspectors and employers is not the most viable means of improving the workplace. Instead of ensuring that inspectors are welcomed at worksites, an improved working environment could be better achieved by separating the advisory and enforcement functions.[263] This criticism was echoed

256. M. ROTHSTEIN, *supra* note 23, at 324.

257. *See* S. KELMAN, *supra* note 6, at 189.

258. Lundberg conducted interviews with 20 inspectors in two districts. Lundberg, Preliminary Results, *supra* note 82, at 11.

259. *Id.*

260. *Id.* at 8.

261. S. KELMAN, *supra* note 6, at 211.

262. Lundberg, Preliminary Results, *supra* note 82, at 6.

263. Wiklund, Arbetsmiljön—Skilj på Rådgivning och—inspektion (1981). Birger-Wiklund is an expert on occupational safety and health who works for Arbetslivscentium, a government funded Labor Studies Institute.

by the Metal Workers Union, in a motion to the 1981 LO Congress.[264] As mentioned previously, OSHA inspectors do not have this dual role problem, since they are forbidden by regulation from giving advice to employers during inspections.[265]

D. Psycho-Social Issues

Many people active in efforts to reform the law were disappointed with the guidelines on the psycho-social aspects of the workplace.[266] Not only were the guidelines vague, but the Board also created a new category specifically for the guidelines. This category has a status lower than a regulation.[267] Characterizing the guidelines as a list of precatory expressions is fair, since they have no binding force.

Prior to the adoption of the guidelines, there had been a lively debate, interesting research, and a change in public awareness. The general public had accepted the idea that stressful or monotonous jobs cause physical and mental health problems that may be as damaging as more well known work hazards. Some fear that this momentum will be lost because the suggestions in the guidelines are so weak and uncreative.[268] One expert described the problems with the rule as follows: "The new rule is at best a catalogue of old, well-known factors which can cause problems for the working environment. Moreover, the rule does not provide any guidance on methods or procedures which might be followed to solve such problems."[269]

Drafting such guidelines could not have been an easy task. Obviously, this particular area does not lend itself to exact formulations. Even if some psycho-social problems can be alleviated by changes in the organization of work, there remain many psycho-social problems which stem from personality conflicts. The law was not designed for, nor are the agencies capable of, resolving this type of conflict. "The most we can do," said one Labor Inspectorate employee, "is to bring this type of problem to the attention of employers, and employee representatives, and perhaps enlist the aid of the Company Health Services.

264. Motioner till LO Kongressen, Motion II, Sv. Metallindustriarbetareförbundet 213 (1981).

265. M. ROTHSTEIN, *supra* note 23, at 69.

266. *See supra* note 214 and Appendix II, *infra* pp. 353-54.

267. This new regulation, which is even set apart from the rest of regulations by the color of the outside folder (it is green, the rest are orange), is not even called a regulation, but merely described as "allmanna råd" which translates literally to mean "general advice."

268. Letter to author from Lars Lundberg (August 28, 1981).

269. Interview with Helena Striwing, Attorney, Falun Labor Inspectorate District, Falun, Sweden (June 10, 1981).

After all, we can't order people to like each other and be nice."[270]

E. Cost-Benefit Analysis

The issue of cost-benefit analysis in occupational safety and health administration is never squarely addressed in Sweden. Although a balancing of costs and benefits takes place at several levels, only the vaguest of standards guide people who must do the balancing. Despite the fact that many decisions take some comparison of costs and benefits into account, this factor in the decision-making process is usually not mentioned or explained.

In contrast to the previous law, there is no express provision in the new law for making adjustments due to economic factors.[271] Moreover, the Board is exempt from a provision which requires agencies issuing new regulations having a considerable economic effect to submit them first to the Executive Branch for approval.[272] Nevertheless, there is authority in the legislative history of the Act for recognizing that some weighing of costs and benefits will necessarily occur:

> Obviously we are not talking about a one step transformation of the working environment without any consideration of economic and technical resources. It's a question of a gradual development, where the law gives support and inspiration to the agencies and labor market parties . . . . The interpretation of the law should therefore develop taking into consideration the need to improve the working environment as well as the economic resources which are available at each point in time.[273]

The problem with this type of vague formulation, however, is that it can be interpreted differently at every decision-making level. Furthermore, if balancing is done at every level, the compounded effect may mean that cost-benefit analysis is given considerably more importance than was ever intended. In addition, the lack of information about whether and how cost-benefit balancing is being implemented makes it impossible to evaluate what actual effect it has on the working environment.

It is likely that cost-benefit analysis occurs at three levels of decision-making and almost always on an ad hoc basis. The National Board has issued an internal regulation which mandates that an analy-

270. *Id.*

271. Arbetarskyddskungörelse SFS 1949:208, *amended by* SFS 1956:476, SFS 1958:660, SFS 1963:657 (1949).

272. Proposition, *supra* note 32, at 255-56.

273. *Id.* at 192.

sis of the costs of implementation, along with other factors, be conducted in connection with all directives issued by the Agency.[274] Since the Agency is not required to explain their reasoning process, however, the public is kept uninformed about the weighing of employee health versus employer profits in the formulation of regulations.

Inspectors also make individual judgments on costs and benefits in deciding whether to issue warnings, citations, or penalties.[275] Since inspectors receive little guidance from the Board on this issue, it is likely that employers are not treated uniformly under the law. Another problem with giving an inspector a free hand is the lack of training. As Lundberg points out, Labor Inspectorate districts have no employees qualified to make economic judgments regarding an employer's ability to bear the cost of working environment problems here.[276]

Balancing also takes place when cases are decided by courts and agency tribunals, although it is usually not mentioned in opinions. The National Board rarely states specifically that adjustments are being made for economic reasons. Often, standards such as "what is reasonable under the circumstances," are cited instead. In 1979, for example, several cases were appealed to the Board concerning whether heaters were required in different types of vehicles used by employees working outdoors.[277] Considering the extremely frigid conditions in Sweden, especially in the north, this issue obviously has important ramifications for employee health. Apparently afraid that a positive decision would set an expensive precedent, the Board denied relief to the employees.[278]

Cost-benefit analysis in occupational safety and health law is a much more hotly debated issue in the United States than in Sweden. There has been considerable litigation concerning when cost-benefit analysis must be done and who bears the burden of proving that a specific remedy is or is not "economically feasible."[279] Moreover, exactly what type of cost-benefit calculations must be made is a controversial question.

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274. Interview with Eva Kvarfordt, Arbetslivsfonden, Stockholm, Sweden (July 21, 1981).

275. In Lundberg's interview with 20 inspectors, 19 gave examples or made general comments indicating that in performing their work, they take into account an employer's economic situations. Lundberg, Preliminary Results, *supra* note 82.

276. L. LUNDBERG, *supra* note 232, at 121.

277. Beslut i Besvärsärende, Nr. 50, 51, 52 (1979).

278. *Id.*

279. *See, e.g.*, the opinions of the different commissioners in Continental Can Co., 4 O.S.H.C. 1541 (1976-77), O.S.H.D. ¶ 21,009 (1976), *petition for review withdrawn*, No. 76-3229 (4th Cir. Apr. 26, 1977).

In general, OSHA inspectors possess very little discretion to consider the economic position of the employer in deciding whether to issue a citation. Pursuant to OSHA regulations, citations must be issued for all violations detected.[280] A small number of regulations include the word "feasible" in their texts.[281] This language has been interpreted as requiring OSHA to prove that remedies imposed are economically feasible.[282] In these instances, inspectors consider the economic feasibility of a proposed remedy. In most cases, however, cost-benefit issues are evaluated by the legal staff at OSHA, as a question of proof, rather than by the investigative staff.

Under section 6 of the OSHA Act, OSHA is required to consider the economic feasibility of compliance and the overall effect on the nation's economy in the promulgation of standards.[283] OSHA evaluates several factors in assessing the impact of a particular standard.[284] Challenges regarding the economic feasibility of OSHA standards may be judicially reviewed in accordance with section 6(f).[285]

In addition to being able to challenge a rule when it is initially promulgated, employers may also attempt to avoid the application of a particular regulation to their operations by asserting that the cost outweighs the intended benefits. This defense may be asserted before the Commission, under section 10(a), or on judicial review pursuant to section 11(a).[286] Where the word "feasible" is not used, the Secretary of Labor is presumed to have considered economic factors before promulgating the standard and will not normally have the burden of proving feasibility of compliance before the Commission.[287] Where the word "feasible" is included in the standard, or where there is an alleged violation of the general duty clause,[288] the Secretary is usually required to prove that the application of a standard is economically feasible in a

280. M. ROTHSTEIN, *supra* note 23, at 69.

281. OSHA's noise standard, 29 C.F.R. § 1910.95, is one of the standards which include the word "feasible" in its text.

282. *See* American Textiles Mfgr. v. Marshall, 617 F.2d 636 (D.C. Cir. 1979), *cert. granted* 449 U.S. 817 (1980).

283. OSHA Act, *supra* note 27, § 6(b)(5).

284. Factors considered in assessing a standard's economic impact include the "cost of implementation, the impact on productivity, the effect on the energy supply, the effect on supplies of critical materials, and the effect on market structure." M. ROTHSTEIN, *supra* note 23, at 105.

285. OSHA Act, *supra* note 27, § 6(f).

286. *Id.* § 10(a), § 11(a).

287. *Id.*

288. *Id.* § 5(a)(1).

particular case.[289]

Just what the courts or the Commission will require when economic feasibility is to be proved is not generally agreed upon. Under former Commissioner Barnako's test, the "cost of controls must bear a reasonable relationship to the benefits to be achieved."[290] Commissioner Cottine, on the other hand, contends that cost-benefit analysis is ill-suited to commission proceedings because of the speculative nature of total compliance and the problem of quantifying benefits.[291]

Although the rationale for the use of cost-benefit analysis is that it will produce more efficient decision-making, critics contend that it is expensive and it breeds litigation. Some commentators suggest that this analysis represents an attempt to defeat health and safety regulations altogether.[292] The most obvious fault with the method, however, is that human lives are simply not readily susceptible to valuation in monetary terms.

It is clear that some weighing of employee benefits versus economic consequences is destined to occur. In light of the complexity of the issues, it is perhaps not surprising that neither Sweden nor the United States has settled upon a satisfactory formula. In the United States, employers in some cases have seized upon the opportunity to litigate the issue of cost-benefit as a subterfuge for delaying the expenditure of funds for the protection of their employees. In Sweden, on the other hand, the problem results from the lack of any articulated policy concerning cost-benefit analysis. Instead, decision-makers at every level make cost-benefit determinations as they see fit.

At a minimum, two requirements in connection with cost-benefit analysis are imperative. First, the health and safety of the employees should weigh much heavier on the scale than the cost to employers. This requirement is consistent with the legislative intent in both countries. Furthermore, cost-benefit computations should be recognized as such and their methodology made clear so that they may be intelligently evaluated.

V. CONCLUSION

The Swedish system to better the work environment appears to be

289. *Id.* at 105-06, 157-58.

290. Samson Paper Bag Co., 8 O.S.H.C. 1515, 1980 O.S.H.D. 24555 (1980).

291. *Id.*

292. Rodgers, *Benefits, Costs and Risks: Oversight of Health and Environmental Decisionmaking*, 4 HARV. ENVTL. L. REV. 191, 192 (1980).

effective, almost in spite of the bureaucracy.[293] Although the frequency of accidents has remained relatively constant during the 1970's,[294] the number of work days missed has decreased, indicating that accidents are becoming less serious.[295] The number of deaths due to work related injuries has decreased dramatically. In 1955, 425 persons were killed in on-the-job accidents.[296] By 1981, this figure had dropped by sixty-seven percent to 130 deaths.[297]

A statistical comparison of the results of Swedish and United States occupational safety and health programs would enhance the comparison of the legislation in the two countries. Unfortunately, such a comparison is not instructive, since the indices used for reporting statistics are different.[298]

The United States can learn a great deal from studying the administration of occupational safety and health laws in Sweden. The most valuable contribution of such study would be the injection of new ideas into discussions by United States occupational safety and health law practitioners. The widespread system of safety stewards and safety committees, as well as the ambitious program of education for these persons, are especially worthy of emulation. The Swedish emphasis on the total work environment and the practical application of worker democracy should also be investigated. Their rulemaking procedure, which utilizes small group negotiations, is more conducive to making positive changes in the working environment than the adversary system

293. The conclusion that the Swedish system "appears" to be effective is purposefully guarded. For one thing, the final tally is not in. Although some of the most important legislative changes occurred during the early 1970's, statistics are not yet available for any meaningful length of time following the passage of the new legislation. A second problem with evaluating Swedish working environment statistics is that there have been two major reporting changes in the last 10 years (most notably the changeover in 1977 to computerized accident reporting). Both of these changes presumably caused sudden jumps in the number of incidents *reported* even though the actual number of incidents *occurring* may have dropped or increased only slightly. Furthermore, the author's citation of just a few of the more obvious indications of change may be misleading. An in-depth statistical analysis would result in a total picture with more nuances and qualifications. Statistika Centralbyrån, Arbetsskador 1979, (1979). This annual report on occupational injuries is published by the National Central Bureau of Statistics.

294. *Id.* at 26.

295. *Id.* at 28.

296. *Id.* at 27.

297. *Id.*

298. In Sweden, incidence rates are computed on the basis of 1,000 hours of work, while in the United States, these rates are derived from the incidence of accidents or illness per 100 full time workers. Refinements in the reporting of occupational safety and health statistics in Sweden, *see supra* note 293, also make comparisons over time between the two countries difficult.

used in the United States.[299]

In light of the Reagan administration's antagonistic attitude toward occupational safety and health regulation,[300] is is highly unlikely that the United States will learn from the Swedish system or take advantage of its potential alternatives at this time. The possibility that Sweden might benefit from practices in the United States, however, is not as remote. There are three particular areas where Sweden can benefit from a careful study of United States procedures.

First, control over the compliance process in Sweden is unnecessarily lax. Because of the general distrust of government in the United States, OSHA has been forced to become more accountable to the public. A similar tightening of the internal controls at the Swedish National Board of Occupational Safety and Health would do much towards achieving more uniform enforcement of the law.

Second, improvement is needed in the reporting of judicial and administrative decisions. Occupational safety and health case law is a resource for rational decision-making which is not employed often enough in Sweden. Although a system as elaborate as all of the digests, reporters, and journals which are devoted to occupational safety and health issues in the United States is probably not necessary, a study of these analytical tools might suggest a method of reporting cases more suited to Swedish needs.

Third, the enforcement and advisory functions of the Swedish inspector should be separated. Although there are certain disadvantages to giving inspectors a dual role, these disadvantages are outweighed by the fact that the law is not being effectively enforced. It might be appropriate to reorganize the Labor Inspectorate into two separate agencies: one to enforce the law, the other to give technical assistance on compliance.

Neither Sweden nor the United States is likely to benefit from wholesale adoption of the other's programs. Inspectors in Sweden, accustomed to the freedom and discretion they have been allowed to ex-

299. Of course, there would be legal obstacles to making this type of change, since OSHA's rulemaking procedure is statutorily prescribed. However, greater use of advisory committees to draft regulations might ease the acceptance of regulations and would not require formal changes.

300. Reagan suggested during his presidential campaign that OSHA ought to be abolished. Although he was unsuccessful in this effort, drastic budget cuts have seriously jeopardized the agency's effectiveness. Inspections were cut back by 25% in 1982. The total amount of penalties levied against employers decreased by 70%. The issuance of willful citations, which carry fines up to $10,000, decreased by 89%. The Philadelphia Inquirer, Dec. 26, 1982, at 4C.

ercise, will not take kindly to stricter controls such as the computerized reporting systems used by OSHA. Management in the United States is unlikely to graciously accept the right of union stewards to unilaterally halt work for safety reasons. In such areas, cultural traditions and differences must be taken into account. Nevertheless, with further study, each country should be able to borrow ideas that have proven successful elsewhere. By modifying programs to suit their own needs, both the United States and Sweden can develop more effective programs to protect their workers from occupational hazards.

APPENDIX I

THE SWEDISH WORKING ENVIRONMENT ACT*

CHAPTER 1

Purview

Section 1

Subject to the restrictions specified in Section 3, this Act shall apply to every activity in which employees are used for work on an employer's account.

Chapter 3 contains certain provisions concerning duties of other persons than employers and employees.

Section 2

For the purposes of Chapter 2, Chapter 3, Sections 1-14, 17, paragraph two, and 18 and Chapters 7-9, the following shall be equated with employees.

1. Pupils in training, though not at levels below grade 7 of elementary school or the counterpart thereof.
2. Persons who as inmates of an institution perform work which they have been allotted.
3. Conscripts or other persons performing statutory service or participated in voluntary training for activities within the total defence establishment.

Pupils and inmates referred to in points 1 and 2 of the foregoing shall also be equated with employees for the purposes of Chapter 5, Sections 1 and 3.

For the purposes of paragraphs one and two of this section, the provisions of this Act concerning employers shall apply to the person conducting the activity of which the work forms part.

Section 3

This Act shall not apply to the following.

1. Service on board ship.
2. Work done in the home of the employer.

The provisions of Chapter 4 and Chapter 5, Section 5, shall not apply to work done in an employee's home or otherwise in such circumstances that it cannot be regarded as the duty of the employer to supervise the arrangement of the work.

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* Official English translation of Arbetsmiljölayen (the Swedish Working Environment Act), Arbetsmarknadsdepartementet (Ministry of Labor) Stockholm, Sweden (1978).

Section 4

This Act notwithstanding, the Government, or an administrative authority nominated by the Government for the purpose, may within the armed forces and the civil defence establishment issue special regulations concerning matters dealt with in the Act.

CHAPTER 2

The state of the work environment

Section 1

The Work environment shall be kept in a satisfactory state having regard to the nature of the work involved and the social and technological progress occurring in the community at large.

Working conditions must be adapted to individual physical and mental capabilities. The aim must be for work to be arranged in such a way that the employee can influence his or her work situation.

Section 2

Work must be planned and arranged in such a way that it can be carried out in healthy and safe surroundings.

Section 3

Working premises must be arranged and equipped in such a way as to provide a suitable working environment.

Section 4

Atmospheric, acoustical and light conditions must of satisfactory quality, as must all other conditions with a bearing on industrial hygiene.

Adequate safety precautions must be taken to prevent injuries being caused by falls, slips, fire, explosion, electric current or other comparable factors.

Section 5

Machinery, implements and other technical devices must be designed, positioned and used in such a way as to afford adequate safeguards against ill health and accidents.

Section 6

Substances liable to cause ill health or accidents may only be used in conditions affording adequate security.

Section 7

Personal protective equipment is to be used when adequate security from ill health or accidents cannot be achieved by other means. This equipment is to be provided by the employer.

Section 8

Spaces and facilities for personal hygiene, meals and rest, as well as for

first aid in connection with accidents and illness, are to be provided to the extent appropriate to the nature of the work and the needs of the employees.
Personnel transport vehicles must be suited to their purpose.

Section 9

Special provisions concerning the design and construction of buildings are contained in the Building Statute (1959:612) and in regulations issued pursuant to the same.

CHAPTER 3

General obligations

Section 1

Employers and employees must co-operate to establish a good working environment.

Section 2

The employer must take all the precautions necessary to prevent his employees from being exposed to health hazards or accident risks. The employer must also take care to ensure that work is planned and arranged in such a way as to provide a satisfactory work environment. Premises, machinery, implements, safety equipment and other technical devices must be kept in a good state of repair.
The employer must consider the special risk of ill health and accidents connected with an employee working alone.

Section 3

The employer must ensure that employees acquire a sound knowledge of the conditions in which work is conducted and that they are informed of the risks which work may entail. He must also make sure that employees have received the training which is required and that they know what measures must be taken for the avoidance of risks.
The employer must give consideration to the particular aptitudes of each employee for the work in hand. In the planning and arrangement of work, due regard must be had for the fact that individual persons differ in their aptitudes to perform tasks.

Section 4

Employees must help to create a satisfactory work environment. They must observe current regulations, and they must use the safety devices and in other respects exercise the caution required for the prevention of ill health or accidents.
An employee finding that work entails an immediate and serious danger to life or health must immediately notify the employer's representa-

tive or a safety delegate. The employee cannot be held liable for any damage resulting from his non-performance of work pending instructions regarding its resumption.

Section 5

An employer shall where applicable even in the course of work done by himself comply with the provisions of this Act and with the regulations issued pursuant to the same. The same shall apply to persons jointly engaged in commercial activity on their own account and without engaging any employees but not if the activities are conducted solely by members of one and the same family.

Persons carrying on commercial activities without employees, singly or together with members of their families, shall be bound by the provisions of this Act and regulations pursuant to the same concerning technical devices and substances liable to cause ill health or accidents, and also concerning work places common to several enterprises.

Section 6

Two or more persons simultaneously engaged in activity in the same work place are to consult one another and co-operate with a view to establishing satisfactory safety conditions.

Section 7

The person commissioning a building or construction is responsible for the co-ordination of measures for the prevention of ill health and accidents at a work place common to several enterprises. If a permanent site is a work place common to several enterprises, the person controlling the work place shall be similarly responsible. Responsibility for such coordination may be delegated to one of the persons conducting work at the work place.

Employers and self-employed persons in other common work places than those referred to in paragraph one of this section may agree that one of their number is to be responsible for the co-ordination.

The person in whom responsibility is vested according to this section is to ensure the co-ordination of safety measures at the work place. It is the duty of other employers and persons working at the work place to comply with the instructions given by him to this end.

Section 8

Any person manufacturing, importing, conveying or granting another person the use of any machinery, implement, safety equipment or other technical device shall take steps to ensure that it affords adequate security against ill health and accidents when it is delivered for use or is displayed for sale or for purposes of advertisement. When delivered it shall be accompanied by the necessary instructions concerning its as-

sembly, use and maintenance. It shall be clearly labelled with particulars material to the prevention of ill health and accidents.

Section 9

Any person manufacturing, importing or conveying a substance liable to cause ill health or accidents shall take the measures needed in order to prevent or counteract any safety hazards entailed by the intended use of the substance. When the substance is delivered for use, it shall be accompanied by the necessary instructions concerning its handling. The substance or a packaging, vessel or suchlike containing the substance must be clearly labelled with particulars material to the prevention of ill health and accidents.

Section 10

Any person installing a device referred to in Section 8 shall take steps to ensure that the necessary safety devices are erected and that all other safety precautions appropriate to the installation are taken.

Section 11

In Chapter 7, Sections 8 and 9, provision is made concerning the safety liability in certain cases of persons who control work sites or who provide premises or land for work or as personnel facilities.

Section 12

If considerations of safety so require, the Government or, by authority of the Government, the National Board of Occupational Safety and Health, may prescribe the following.

1. A work process, working method or facilities intended for a particular kind of activity may not be used without permission.
2. A particular kind of device referred to in Section 8 may not be used or delivered for use without prior approval.
3. A substance referred to in Section 9 may only be used after approval. Alternatively, its use shall be governed by special conditions.

Approval of the kind referred to in point 2 above, may be subject to prescribed conditions. In connection with such approval, stipulations may be issued concerning the instructions for assembly and use which are to accompany a device when it is delivered for use.

The issue of instructions as provided in point 2 above may be accompanied by conditions concerning use. Permission or approval as per paragraph one of this section may be made subject to conditions concerning use.

Even without connection with prescription as provided in paragraph one of this section, stipulations may be made concerning control, testing or continuous inspection when using a device referred to in the

same paragraph and also concerning examination of the conditions of industrial hygiene in a certain type of activity..

Section 13

The Government or, by authority of the Government, the National Board of Occupational Safety and Health, may prescribe the following.

1. A certain kind of device referred to in Section 8 shall carry a label or some other marking showing the name of the manufacturer or other particulars concerning the device.
2. A substance referred to in section 9 or a packaging, vessel or such-like containing a substance, shall be marked when in use.
3. A list shall be kept of such device or substance.

Prescriptions may similarly be made concerning the installation of a certain type of device referred to in Section 8.

Section 14

The Government or, by authority of the Government, the National Board of Occupational Safety and Health may prohibit the use of a work process, working method or device referred to in Section 8 or a substance referred to in Section 9, if such a prohibition be considered of particular importance in the interests of safety.

Section 15

If a particular type of work entails a risk of ill health or accident, the Government or, by authority of the Government, the National Board of Occupational Safety and Health, may prescribe the medical examination of persons employed or about to be employed in the work concerned. A prohibition may be issued against the use in such work of any person whom medical examination has shown to be suffering from a disease or debility rendering him particularly susceptible to such risk.

Section 16

If a particular type of work entails a special risk to certain groups of employees, the Government or, by authority of the Government, the National Board of Occupational Safety and Health may prohibit the use of those employees for the work or may prescribe that certain conditions are to apply.

Section 17

The Government or, by authority of the Government, the National Board of Occupational Safety and Health, may with reference to medical examinations prescribed in pursuance of Section 15 or Section 16, prescribe the maintenance of registers containing the names of the persons examined and the results of their examinations.

Persons incurring safety liability under Section 2 or Section 5 may be

similarly ordered to notify or inform the supervisory authority or to store documents of relevance to safety and health.

Section 18

The Government or, by authority of the Government, the National Board of Occupational Safety and Health, may issue instructions concerning the duty of a physician to notify the supervisory authority of disease which may be connected with work and to furnish the supervisory authority with information and assistance.

CHAPTER 4

Section 1

For the purposes of this Act, a rest interval is an interruption of daily working hours during which the employee is not required to remain at his place of employment. The duration and disposition of a rest interval must be specified in advance as exactly as circumstances permit.

A rest interval must be arranged if an employee works for more than five hours at a time. The number, duration and disposition of rest intervals must be satisfactory in relation to working conditions.

Section 2

A rest interval may be exchanged for a mealtime pause at the work site if this is absolutely essential on account of working conditions or because of illness or some other unforeseeable event. Mealtime pauses of this kind are to be counted as working time.

Section 3

Work must be arranged so as to enable employees to take the breaks they need during working hours over and above rest intervals.

Special breaks must be arranged for employees insofar as this is justified by working conditions. The duration and disposition of such breaks must be specified in advance as exactly as circumstances permit. Breaks of this kind are to be counted as working time.

Section 4

A mother may not be denied time off for the purpose of nursing her child.

Section 5

Every employee shall have the necessary free time for rest at night. This free time shall include the period between midnight and 5 a.m.

Exceptions may be made to the above rule where certain types of work needs to be continued during the night or otherwise carried on before 5 a.m. or after midnight on account of their nature, the needs of the general public or other special circumstances.

Section 6

In every period of seven days, an employee shall have not less than thirty-six consecutive hours of free time. This rest shall as far as possible be given at the weekend.

Temporary exceptions may be made to the foregoing if special and unforeseeable circumstances so demand.

Section 7

Deviations from Section 1, paragraph two, Section 5, paragraph one, and Section 6, paragraph one, may be sanctioned by collective agreements concluded or approved on behalf of employees by a main union organization as defined in the Act (1976:580) on the Joint Regulation in Working Life. Provision may also be made in such a collective agreement for the replacement of a rest interval by a mealtime pause at the work site.

An employer bound by a collective agreement referred to in the foregoing may apply the agreement in relation to an employee engaged in work covered by the agreement even if the employee is not a member of the contracting organization of employees. This shall not apply, however, in relation to employees who are covered by some other relevant collective agreement.

Section 8

The supervisory authority may sanction exceptions to Section 1, paragraph two, Section 5, paragraph one, and Section 6, paragraph one, if there are special grounds for so doing.

Section 9

This Act notwithstanding, the Government, or an administrative authority nominated by the Government for the purpose, may issue special instructions concerning the disposition of working hours for road and air transport.

Chapter 5

Young persons

Section 1

For the purposes of this Act, a young person is any person who has not attained the age of 18 years.

Section 2

No young person may be employed before the calendar year of his sixteenth birthday or before the completion of his compulsory schooling.

The aforesaid notwithstanding, a young person may be employed for

light work which is not calculated to prejudice his health, development or schooling. The Government or, by authority of the Government, the National Board of Occupational Safety and Health shall issue special instructions regarding such work.

Section 3

The employer shall ensure that young persons are not employed in any manner which entails a risk of accident or over-exertion or any other form of harmful effect on their health or development.

The Government or, by authority of the Government, the National Board of Occupational Safety and Health may prohibit or regulate the engagement of young persons in work entailing a substantial risk of accidents or over-exertion or of any other harmful effects on their health or development.

Section 4

The Government or, by authority of the Government, the National Board of Occupational Safety and Health may, with reference to medical examinations ordered in pursuance of Section 2, paragraph two, or Section 3, paragraph two, prescribe the maintenance of registers listing the names of the persons examined and the results of their examinations.

Section 5

Young persons may not be employed for more than 9 hours in 24 or 45 hours per week.

Young persons being employed must be given continuous time off from work for nightly rest for at least 11 hours in 24. This period is to include the hours between 10 p.m. and 5 a.m.

The supervisory authority may grant exemptions from the first and second paragraphs of this section if there are special grounds for so doing.

CHAPTER 6

Co-operation between employers and employees

Section 1

The employer and the persons employed by him shall conduct suitably organized safety activities.

Section 2

At every place of employment where five or more persons are regularly employed, one or more of the employees shall be appointed safety delegates. Safety delegates are also to be appointed at other work places if working conditions so require. Deputies should be appointed for safety delegates.

Safety delegates are to be appointed by the local trade union organization currently or customarily having a collective agreement with the employer. In the absence of such an organization, safety delegates are to be appointed by the employees.

In the case of a work place for which no safety committee has been appointed in pursuance of Section 8, the Labour Inspectorate may, if conditions so require, sanction the appointment of a safety delegate from outside the group of employees by the local branch of a trade union or comparable association of employees (a regional safety delegate).

Section 3

Should more than one safety delegate be appointed at a particular place of employment, one of the delegates is to be appointed senior safety delegate with the task of co-ordinating the safety delegates' activities.

Section 4

The safety delegate represents the employees on safety matters and is to work for satisfactory safety conditions. To this end the delegate is to supervise the safeguards against ill health and accidents within his safety area. The delegate is to participate in the planning of new premises, devices, work processes and working methods or alterations to existing ones, as well as planning of the use of substances liable to cause ill health or accidents. Employers must notify the safety delegate of any changes having a significant bearing on safety conditions within his safety area.

The safety delegate shall endeavour to induce other employees to participate in safety work.

Employer and employees are jointly responsible for safety delegates being given the requisite training.

Section 5

Safety delegates referred to in Section 2, paragraph two, are entitled to leave of absence required for the performance of their duties, without prejudice to remuneration or other benefits.

Section 6

The safety delegate is entitled to study all documents and to obtain any other information material to his activities.

Section 7

If a particular job involves immediate and serious danger to the life or health of an employee and if no immediate remedy can be obtained through representations to the employer, the safety delegate may order

the suspension of work on that job pending a decision by the Labour Inspectorate.

If considerations of health and safety so demand, and if no immediate remedy can be obtained through representations to the employer, the safety delegate may order the suspension, pending a decision by the Labour Inspectorate, of work done by an employee working alone.

If a prohibition issued by a supervisory authority, having acquired force of law or requiring immediate compliance by virtue of an Ordinance pursuant to Chap. 9, Section 5, is disregarded, a safety delegate may immediately suspend the work to which the prohibition refers.

The safety delegate cannot be held liable for any damage resulting from a measure referred to in this section.

Section 8

At every place of employment where 50 or more persons are regularly employed, there shall be a safety committee consisting of representatives of the employer and of the employees. Safety committees are also to be appointed at places of employment with smaller numbers of employees if the employees so require.

Employees' representatives are to be appointed from among the employees by the local trade union organization currently or customarily having a collective agreement with their employer. In the absence of such an organization, the representatives are to be appointed by the employees.

Section 9

The safety committee is to plan and supervise safety work throughout the place of employment. It is to keep careful track of the development of matters concerning protection against ill health and accidents and is to work for satisfactory safety conditions. The safety committee is to deal with matters concerning occupational health service and the planning of new premises, devices, work processes and working methods or alterations to existing ones, the use of substances liable to cause ill health or accidents as well as matters concerning information and training on the subject of the work environment.

Section 10

Safety delegates must not be impeded in the discharge of their duties. A safety delegate shall not be given inferior working conditions or terms of employment by reason of his appointment. On the termination of his appointment, the safety delegate must be assured of working conditions and terms of employment identical or equivalent to those which he would have had if he had never held his appointment.

Section 11

An employer or employee contravening the provisions of Section 10 shall make good any loss or injury caused. In determining whether loss or injury has been caused and if so the extent thereof, circumstances which are not of a purely economic character shall also be taken into account. If it appears reasonable in view of the extent of loss or injury or other circumstances involved, the amount of damages may be reduced or may not be imposed.

If liability for the damage is shared by several persons the liability shall be apportioned between them as is reasonable according to the circumstances.

Section 12

Any persons wishing to sue for damages under Section 11 shall notify his opponent of his claim within four months of the occurrence of the loss or injury concerned. If within that period negotiations concerning the claim have been demanded under the Act (1976:580) on the Joint Regulation in Working Life or by virtue of a collective agreement, an action shall be brought within four months from the conclusion of the negotiations. Otherwise an action must be brought within eight months from the occurrence of the loss or injury.

The foregoing shall be correspondingly applicable to claims concerning remuneration and other benefits with reference to Section 5.

If the provisions of the foregoing paragraphs are not complied with, the claim concerned will lapse.

Section 13

Cases concerning the application of Sections 10 and 11 are to be determined in accordance with the Industrial Litigation Act (1974:371). Claims against employees, however, shall be subject to the general rules of judicial procedure.

Section 14

Sections 4-7 and 10-13 shall be applicable to an employer when the employer has been notified of the appointment of a safety delegate by the organization or the employees making the appointment or, if the employer has not been accessible, notice of the election has been transmitted to the work place.

Section 15

The provisions of Section 5 and Sections 10-14 shall be correspondingly applicable to members of safety committees.

Section 16

Also the Shop Stewards Act (1974:358) shall apply concerning safety delegates and safety committee members appointed by organizations

referred to in the second or third paragraph of Section 2, insofar as their rights under this Chapter are not limited thereby.

CHAPTER 7

Enforcement

Section 1

The National Board of Occupational Safety and Health and, under its superintendence and direction, the Labour Inspectorate shall supervise the observance of this Act and of the instructions issued pursuant thereof.

Section 2

It shall be the duty of municipal authorities, after consulting the Labour Inspectorate, to appoint one or more appropriately qualified municipal officers to assist the Inspectorate in its enforcement activities pursuant to Section 1.

Each municipality shall make an annual report to the Labour Inspectorate concerning its enforcement activities.

If any municipal enforcement officer defaults in the discharge of his duties and the fact is brought to the notice of the municipality by the Labour Inspectorate or in some other way, the Municipality shall take steps to rectify the situation.

Section 3

A supervisory authority is entitled on request to receive the information, documents and samples and to order the investigations required for the enforcement of this Act.

Section 4

A person who in the course of his business uses a certain product or commissions another person to perform a certain task is duty bound to disclose the identity of the person supplying the product or performing the task when required by the supervisory authority to do so.

Section 5

For purposes of enforcement under this Act, the supervisory authority shall be entitled to access to work places and may carry out investigations or take samples there. No compensation shall be payable for samples taken.

It is the duty of the police authorities to provide such practical assistance as may be required for the enforcement of this Act.

Provision concerning the compensation payable to a supervisory authority for its reasonable expenses in connection with sampling and the testing of samples will be made by the Government or, by authority of

the Government, by the National Board of Occupational Safety and Health.

Section 6

If at a work place common to several enterprises there is no person in whom co-ordinating responsibility has been vested pursuant to Chapter 3, Section 7, the Labour Inspectorate may order who is to have such responsibility. If there are special grounds for doing so, the Labour Inspectorate may order that co-ordinating responsibility is to be vested in some other person than the person having such responsibility according to the said section.

In the implementation of the foregoing, the co-ordinating responsibility shall be vested in one of the persons conducting activities at the common work place.

Section 7

The Labour Inspectorate may issue a person having safety liability under Chapter 3, Sections 2-10 or Section 6 of this Chapter with such orders or prohibitions as are needed to secure compliance with this Act or with instructions issued pursuant to the same.

Orders or prohibitions by the Labour Inspectorate may be issued on pain of fines.

Should any person neglect to take the measure required of him in an order, the Labour Inspectorate may order rectification at his expense.

If an order has been issued concerning a measure for which building permission is required under the Building Statute (1959:612), and if such permission is refused, the order shall lapse as far as the measure is concerned.

Section 8

If at any work place conditions exist which expose any person working there to the risk of ill health or accident, the Labour Inspectorate may issue the person controlling the work place with an order or prohibition under Section 7, even in cases where this person is not the employer of the person exposed to the risk.

Section 9

If premises or land provided for work or as personnel facilities are unsatisfactory in terms of safety and health, the Labour Inspectorate may, pursuant to Section 7, prohibit any further providing until specified improvements have been made to the premises or land concerned.

Section 10

Measures referred to in Sections 6-9 may also be ordered by the National Board of Occupational Safety and Health.

Section 11

To ensure that a prohibition pursuant to Sections 7-9 is complied with, a supervisory authority may order a building, space or device to be sealed or otherwise shut off. Provision for the execution of such an order shall be made by the authority.

Section 12

The Government may ordain that special charges are to be levied in matters coming under this Act.

Section 13

No person who has been concerned with supervisory activities under this Act or has been appointed to serve as a safety delegate or as a member of a safety committee may improperly divulge or make use of knowledge acquired by him in the course of his duties and concerning professional secrets, working methods, business affairs, the personal circumstances of an individual person or matters having a bearing on the defence of the realm.

The foregoing shall be correspondingly applicable to any member of the committee of a local trade union organization with respect to knowledge derived by him from a safety delegate or a safety committee member appointed by the organization.

CHAPTER 8

Sanctions

Section 1

Any person intentionally or negligently failing to comply with an order or prohibition issued to him in pursuance of the provisions of Chapter 7, Sections 7-10, may be fined or sentenced to imprisonment for not more than one year. This provision, however, shall not apply if the said order to prohibition was issued under penalty of a fine.

Section 2

Any person intentionally or negligently failing to comply with a prescription or condition issued in pursuance of Chapter 3, Section 12 or 14, may be fined or sentenced to imprisonment for not more than one year.

Fines may be imposed on persons intentionally or negligently

1. contravening Chapter 5, Section 2, paragraph one,
2. contravening a prescription issued pursuant to Chapter 3, Section 13, or Sections 15-17 or Chapter 5, Section 2, paragraph two, Section 3, paragraph two, or Section 4,
3. furnishing incorrect particulars of importance in the discharge of their obligations under Chapter 7, Section 3 or 4,

4. removing a safety device or rendering such a device inoperative without valid cause.

Section 3

Provisions concerning liability for infringements of Chapter 7, Section 13 are contained by Chapter 20, Section 3 of the Penal Code.

Section 4

Any device or substance which has been used in connection with offences coming under this Chapter and in violation of a prohibition under Chapter 3, Section 14 or Chapter 7, Section 7, or the value of such a device or substance, shall be declared forfeit save where such forfeiture would be patently unjust.

CHAPTER 9

Appeals

Section 1

Appeals against decisions by the Labour Inspectorate may be lodged by administrative process with the National Board of Occupational Safety and Health.

Section 2

Decisions by the National Board of Occupational Safety and Health in matters referred to in Chapter 5, Section 5, or Chapter 6, Section 2, paragraph three are final. The same applies to decisions by the Board in matters concerning the implementation of prescriptions issued in pursuance of Chapter 5, Section 2, paragraph two or Section 3, paragraph two.

Appeals against other decisions made by the National Board of Occupational Safety and Health in particular cases pursuant to this Act or by authority of a Government Ordinance issued pursuant to the same are to be lodged with the Government.

No appeal may be made against decisions by the National Board of Occupational Safety and Health not referring to individual cases.

Section 3

To safeguard the interest of employees in matters coming under this Act, appeals as per Section 1 or Section 2 may be lodged by the senior safety delegate or, in the absence of a senior safety delegate, by some other safety delegate. If there is no safety delegate, the appropriate association of employees may lodge an appeal insofar as the matter concerns its members interests and the association has previously made a pronouncement in the matter.

Section 4

The National Board of Occupational Safety and Health may refer to matters of particular importance and not referring to individual cases to the Government before deciding them.

Section 5

A supervisory authority may ordain that its decision shall be complied with notwithstanding any appeal pending.

APPENDIX II

MENTAL AND SOCIAL ASPECTS OF THE OCCUPATIONAL ENVIRONMENT**

GENERAL RECOMMENDATIONS 1980:14

The basic principle enshrined by the Work Environment Act is that work, in addition to being as free as possible from physical and mental hazards, must also provide an opportunity of involvement and job satisfaction.

Job content has an important bearing on the job satisfaction of the individual.

Job content is determined by machines and technical systems as well as by the disposition and organization of work. Efforts should therefore be made already during the process of planning and designing work to take into consideration the way in which the person who is to do the job concerned will experience his or her work situation.

Work should be designed so as to provide the employee with an opportunity of influencing and varying the pace of work and the working methods used, and of surveying and verifying the results of his or her labours.

Work should provide an opportunity for the utilization of knowledge and skills and ought preferably to provide opportunities of development and new experience as well.

A shift from rigid and monotonous working procedures towards greater independence and greater vocational responsibility is essential as a means of achieving greater involvement in measures of occupational safety and health.

Good contact with their fellow workers is an important consideration to most people. Human beings need community experience and security, and they need to feel appreciated at work. Opportunities of contact with one's fellow workers hinge to a great extent on the way in which work is organized. Methods of management and supervision do a great deal to influence the development of the interpersonal climate at a workplace.

The environment on working premises, e.g. lighting and noise, has important mental and social implications. Bad lighting can cause headaches, despondency and fatigue. Windows are psychologically

** Official English translation of Psykiska och Sociala Aspekter På Arbetsmiljön (Mental and Social Aspects of the Occupational Environment), Arbetanskyddsstyrelsen (National Board of Occupational Safety and Health) (1980).

important as a form of contact with the outside world. Noise can be unpleasant and generate stress, reducing the workers' performance capacity and making it impossible for them to talk to each other.

Chemical substances in the environment, e.g. solvents and lead, can have mental consequences due to direct effects on the nervous system, added to which they are often a source of anxiety and concern, irrespective of the true risks involved. It is therefore important for workers to be equipped with a knowledge of such hazards and given the opportunity of influencing measures of prevention.

Computerization is having far-reaching effects on the occupational environment in engineering shops and in offices. The transfer to computers of jobs which once demanded experience and professional skill can result in job impoverishment. Properly used, however, computer technology can also help to create good working environments. It is important for personnel to be enabled to participate in planning work for the introduction of new computerized systems.

Working hours have an important bearing, not only on the work situation itself but also on life outside the working context. Shiftwork can involve both physical and social strains—physical strains due to the disruption of the body's biological rhythm and social strains due to potential effects on family life, social relations and other extra-vocational activities.

There are various signals of unsatisfactory working conditions which must be heeded in order to prevent ill health and with a view to developing and improving the occupational environment. For example, employees in a certain department, occupational group or shift may have a high rate of sickness absence or may show other signs of stress or dissatisfaction. The main responsibility for observing signals of this kind lies with the management and the safety organization. When such a situation arises, the working environment must be charted and working conditions must be discussed by the management and the workers concerned. It is important for employees to participate in the transformation of their work situation.